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CLERK: Mr. Dorgan.
SEN. DORGAN: No.
CLERK: No. Mr. Wyden.
SEN. WYDEN: Aye.
SEN. MCCAIN: Mr. Brownback is no by proxy.
CLERK: Brownback is no by proxy.
SEN. MCCAIN: And Ashcroft is no by proxy. CLERK: Ashcroft is no by proxy.
SEN. : Mr. Chairman, Frist is aye.
SEN. MCCAIN: Dr. Frist is aye.
CLERK: Frist is aye.
SEN. MCCAIN: And I'm no.
CLERK: You're no. Oh, land. Yeas eight, nays nine.
SEN. MCCAIN: The amendment is not agreed to. Now we'll move to title seven.
Senator Hutchison has -- she's not here. Senator Brownback -- Senator Hutchison is not here. Senator Brownback wants to offer his amendment later, so we will set that aside, as well as Senator Hutchison's.
Senator Dorgan, you had a Dorgan 2 amendment. I see Dorgan 1 was withdrawn, if we're looking at the same document here. And Dorgan 2, which was to allow punitive damages above the caps -- do you still wish to propose that amendment?
SEN. DORGAN: Mr. Chairman, I will not propose it. I do have two additional amendments, however; one towards the end of the bill on antitrust and the other, an NIH amendment. So whenever it's appropriate, I will offer them.
SEN. MCCAIN: Okay. We'll certainly keep that in mind. I'd like to try and keep through the titles here. Senator Breaux, do you have an amendment that allows recovery from insurance firms if the tobacco manufacturer can't pay?
SEN. BREAU: Yeah.
SEN. MCCAIN: Do you care to propose that at this time?
SEN. BREAU: If I can do it now.
SEN. MCCAIN: Senator Breaux is recognized.
SEN. BREAU: Mr. Chairman, the purpose of this amendment is to --
SEN. FORD: What number is it?
SEN. BREAU: It's number -- I don't know.
SEN. FORD: Okay.
SEN. BREAU: Breaux one and only. The purpose of it is to require, in the event a tobacco manufacturer is unable to make any payments that might be required under the act, that parties may seek recovery from available insurance companies money that they would be provided under an insurance plan to the tobacco company.

The claim against an insurance company must be based -- it would be based on the liability of the tobacco company and it would only be for the amount of coverage that they would be insured for.

In other words, the purpose of the amendment says that if you have a legitimate claim against a company and for some reason they can't pay it, that the insurance company who provides that coverage can also (go against?) as far as the purposes of the recovery. It doesn't create any new rights for any party. It just says that if there's insurance, the insurance company should be responsible up to the amount of their insurance for any claims that are claims against the tobacco company. It really takes care of the fact of insolvency by the tobacco company, that if it does have insurance, the insurance company should be responsible for what they cover in their insurance policy. I don't think it's clear in the bill.

SEN. MCCAIN: Senator, could I interrupt you for one second? I'll wait till you finish.

SEN. BREAU: I'm basically finished.

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SEN. MCCAIN: Apparently there was a mistake in the voting of proxy on the last amendment of Senator Ashcroft, that Senator Ashcroft would have voted aye and not no. And would the clerk reflect the results if Senator Ashcroft had voted aye instead of no on the last amendment?

SEN. FORD: That changes the outcome of the amendment, Mr. Chairman.

CLERK: Yes.

SEN. MCCAIN: I'm afraid it does.

CLERK: Yes, it's nine yeas to eight nays.

SEN. MCCAIN: Then the amendment -- then I'm afraid that the amendment --

SEN. FORD: Mr. Chairman?

SEN. ROCKE ELLER (?): Mr. Chairman, the senator from WestsoVirginia wUuld change his vote. SEN. MCCAIN: The senator from West Virginia wishes to change --

Senator utchison is an aye vote also.

CLERK: One, two, three, four, five, six, seven, eight, nine. I think it's eigh yeas to 10 Grys. It's changed? No? (Cross-talk among maugers.) (Lre hter.)

SEN. FORD: It's nine-nine. CLERK: Senine-nine. Okay. Nine-nine.

SEN. MCCAIN: Let me say this. I understand the importance of this amendment to my friend from the state of Washington. Senator Snowe has not voted and who else has not -- Senator Lott cannot vote. So Senator Snowe has not voted on this issue. I would ask unanimous consent that we leave this vote open until we consult with Senator Snowe so that there is a complete vote on this issue. I understand how important it is to the senator from Washington. So with the indulgence o the commitd so we'll wait until Senator Snowe is consulte by our esn know what her vote on this amendment is.

Senator Brownback, you were recorded -- how was Senator Brorded?k recoman's mar

CLERK: Brownback was proxy no.

SEN. MCCAIN: You were proxied no, Senator Brownback.

SEN. BROWNBAC: I'd like to be proxied as yes.

SEN. MCCAIN: Senator Brownback is proxied as yes.

SEN. HOLLIN?S: Proxiedha SEN. MCCAIN: Excuse me. He actually votes yes.

(Laughter.)

SEN. HOLLINGS: Proxied as yes.

SEN. BROWNBAC: (I might as well?) be here in p SEN. M ut, you'reCAIN:

(Inaudible) -- votes yes.

CLERK: Would you like me to read the yeas?

SEN. BREAUX: Yeah, why don't you?

SEN. MCCAIN: Sure, go ahead. Tell me the yeas and the nays, please.

CLERK: Yeas: Mr. Burns, Mr. Gorton, Mrs. Hutchison, Mr. Frist, Mr. Abraham, Mr. Brownback, Mr. Kerry, Mr. Bryan, Mr. Wyden. One, two, three, four, five, six, seven, eight. SEN. MCCAIN: And Ashcroft.

CLERK: And Ashcroft, okay. SEN. MCCAIN: I'm sorry that we're puttingfthis pressure on you, dear.

CLERK: I think it's one, two, three, four, five, six, seven, eight, nine, 10 yeaE.

StN. MCCAIN: So there has to be nine nays. And t -- mendmensiden CLERK: No, wait. One, two, three, SEN. y jefg coMCCAIN: Oh, Senator Snowe is here.

CLERK: It's eight.

SEN. MCCAIN: So it's eight no's, right?

CLERK: Yes, eight.

SEN. MCCAIN: And eight no's. Senator Snowe, this is an important amendment to Senator Gorton and the rest of the committee. (Laughter.) It's important to me and it's important to Senator Inouye. (Laughter.) Are you sure you don't want to just leave? (Laughter.)

SEN. SNOWE: I thought I had. (Laughter.)

SEN. MCCAIN: Do you wish to vote on this amendment, Senator Snowe?

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SEN. SNOWE: Yes.

SEN. MCCAIN: Really, there's already 10 ayes, so it is already carried. But it's -- because --

SEN. : (Inaudible.)

SEN. SNOWE: No.

SEN. MCCAIN: The vote is no. So would you give us a final tally, my dear? And I apologize for putting you through this difficult experience.

CLERK: Yeas 10, nays nine.

SEN. MCCAIN: The amendment is agreed to.

SEN. : Now, does that -- since technically, that was a second agree, can we just voice vote? SEN. MCCAIN: Yes. All those in favor of the amendment, now that we've completed a second agreement, say aye.

(Ayes.

)

SEN. MCCAIN: Opposed?

SEN. : No.

SEN. MCCAIN: The ayes have it, and the amendment -- the Gorton Amendment is agreed to.

Now, I'm sorry, Senator -- well, I apologize, but I thought we ought to clear that up as quickly as possible, because I misinterpreted -- I was misinformed about proxy votes. I want to apologize to Senator Brownback, I want to apologize to Senator Frist, and also to Senator Ashcroft in absentia. Senator Breaux, please continue.

SEN. BREAU: Well, that was perfectly clear. (Laughter.) My amendment, just to state it very quickly, requires that in the event that a tobacco manufacturer is unable to make any payments that they will be required to make under this agreement, that parties would be able to seek recovery from available insurance coverage. It would not create any additional rights, it would only be the limits of the policy that would be involved, and for the purpose of the coverage of the policy.

SEN. MCCAIN: Is there further debate on the amendment? It sounds like a good amendment to me. All those in favor, signify by saying aye.

(Ayes.)

SEN. MCCAIN: Those opposed? The ayes have it. The Breaux amendment is adopted. Senator Hutchison, you are recognized for -- for your amendment under Title VII, which is the offset of attorneys' fees.

SEN. HUTCHISON: Thank you, Mr. Chairman. I believe that amendment is in the bill. It just requires that if there -- if, in the global settlement, there is arbitration for attorneys' fees, that any state settlement that's already made that also has attorneys' fees, those would be offset so you wouldn't have double liability for attorneys' fees. SEN. MCCAIN: At this time, if it would be agreeable, we could also -- I'd like -- since we're on this issue, we'd like to hear from Senator Brownback, who has some rather strongly held views on this issue as well. Would you like to discuss it at this time, or wait?

SEN. BROWNBACK: Senator, I have a separate amendment that --

SEN. MCCAIN: Okay, then we'll wait and do that, then.

SEN. HUTCHISON: And mine I think is acceptable, and has been accepted.

SEN. MCCAIN: Is there further debate on the Hutchison Amendment?

SEN. KERRY: Well, let's --

SEN. MCCAIN: Senator Kerry?

SEN. KERRY: I want to -- just if we could hold on for one minute, please.

SEN. HUTCHISON: It just means that you wouldn't have double jeopardy; that if you have a state agreement and you have attorneys' fees, and then you submit to the -- you have to submit to the arbitration that the attorneys' fees that are

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paid by the state would be an offset.

SEN. MCCAIN: Senator Kerry, let me just remind the committee that first of all, I think this is acceptable. Second of all, one of the major fights that's going to take place on the floor of the Senate will be this entire issue of attorneys' fees, so it's certainly not going to be decided here.

SEN. HUTCHISON: This doesn't determine the attorneys' fees at all. It just says that a state that has a settlement doesn't have to pay twice.

SEN. MCCAIN: Okay, John?

SEN. KERRY: Well, the question --

SEN. : (Off mike.)

SEN. KERRY: Well, I'm not sure, because I'm trying to read the language here, to see whether it is -- you could have different sets of attorneys. I want to figure out who's being precluded from recovery, and that's -- I apologize, but I just want to --

SEN. BRYAN Mr. Chairman, while the distinguished Senator from Massachusetts is away, could we get an explanation of the last line in that amendment, which says "shall be applied as a dollar-for-dollar offset against any potential state liability for attorneys' fees."? An offset against what, would be my question, Mr. Chairman. Maybe one of our attorneys general or staff could explain that? Because I'm not sure what this does, either.

MR. : My first impression is that any arbitration panel would likely take into account what an attorney had already received in payment for existing representation of that client. But, I can't see how this would do any harm, because it seems to imply that if they've received a certain number in fees, and the arbitration panel in total would represent for them another amount of fees, you just subtract what they've already received to get a total of what they get paid in the end.

So, I don't know how it would hurt. But I just don't think it's necessarily necessary.

SEN. BRYAN: In what context would the state have liability for attorneys' fees?

MR. : Well, there are some states that have already settled the actions, and they might have incurred liability with the attorneys that represented them. And, this bill, which would settle state actions, sets up an arbitration panel where the fees could be determined. There's a provision where states can opt out or opt in, so that has to be taken into account.

But let's assume a state has already settled, has opted in, and they've already paid the attorney some money. The question of the fees would go to the arbitration panel. And then this would just say that if any fees that have already been paid to the attorneys need to be taken into account, is what it amounts to.

SEN. KERRY: Okay. Mr. Chairman, could I just ask if Mr. Boyd agrees with that? I don't have a problem with it, but I just want to make sure.

SEN. MCCAIN: Yeah, that sounds reasonable to me.

SEN. KERRY: Mr. Boyd? Are you reading it too for the -- I just wanted to see if you agree with that.

MR. BOYD: I think it's generally right. We're trying to determine whether or not the amendment is written in a way as to how it applies, whether or not you offset -- whether or not you offset what you're paid by the federal government to what you're paid by the state, or, whether or not, when you're paid by the state, you must offset. But the way it appears that --

SEN. KERRY: That's what I was directing at.

SEN. MCCAIN: Could I ask -- could I ask, then, unanimous consent, in agreement of the Senator from Texas that we change the language, make technical corrections, to conform with that intent? SEN. KERRY (?): Yes, the Chairman is correct.

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SEN. MCCAIN: Is that agreeable to the Senator from Texas?

SEN. HUTCHISON: Yes. Because the state would have already incurred. That's the way it would happen, that the state would have paid --

SEN. BRYAN (?): I agree with that.

SEN. HUTCHISON: -- and they just want, if they opt in, to be able to have that taken into account.

SEN. KERRY: Yes. If the language is clarified in that way, I think it can be written better, and I would appreciate that. Thank you.

SEN. MCCAIN: We'll leave it to the staff to clean up that language, and --

SEN. : Mr. Chairman, this is on a state by state basis, as I understand it.

SEN. HUTCHISON: Exactly.

SEN. MCCAIN: Okay. And then the question is on the Hutchison Amendment. Those in favor, with the caveat that the language will be made clearer as to the intent of the amendment, as to satisfy the concerns of Senator Bryan and Senator Kerry. All those in favor say aye.

(Voice vote: Senators say aye.)

SEN. MCCAIN: Those opposed? The ayes have it, and the Hutchison Amendment is agreed to.

Now I'd like to recognize Senator Brownback for his views on attorneys' fees.

SEN. BROWNBACK: Thank you, Mr. Chairman. I'd like to call up amendment -- Brownback Amendment Number 1 to the Title VII.

(Pause in proceedings.)

SEN. BROWNBACK: Mr. Chairman, this is a straightforward amendment, and it's an important amendment as well. It goes to the issue of attorneys' fees in dealing with the overall global settlement, and I think one should compensate the lawyers that have brought this case, that have brought it forward. They did a lot of work. They accomplished something that many people didn't think was accomplishable, but I don't think they should be compensated at \$182,000 an hour. That's the estimate that the Orlando Sentinel put forward on the Florida case. In the Texas case, the compensation rates being estimated at approaching \$100,000 an hour, and it strikes me that's a little high for good legal work. I recognize they did great legal work in this case, but I don't think it should be that high.

This amendment is straightforward, in the sense that it puts forward and says let's leave the arbitration in there on determination of attorneys' fees, leave that panel in place, but let's cap the amount that they can be compensated at \$250 an hour. Good pay for good work, but it's not an exorbitant amount. And plus I think one has to recognize that this money doesn't grow on trees. It comes from somewhere. And the system is going to be paying this money. It's going to come from Medicare, ultimately, and it's going to go from there to the lawyers in this case. And they should be compensated, and they should be compensated well. But in the Orlando Sentinel, as I pointed out, they calculated the \$2.8 billion legal fees in the Florida case would amount to, as I said, \$182,000 an hour in legal fees. And that's just, I think, a touch high. So that's why I put forward this amendment of a \$250 an hour cap in the compensation, and I think it's an important amendment to consider.

SEN. : Mr. Chairman?

SEN. MCCAIN: I think that it's an excellent amendment, but I think that it's something that's going to be left for the floor. In the bill we had, as you know, the provision for one appointed by each of the parties, and then a third appointed in agreement with both of them, and I'd like to see that hold. But I also would admit that there are going to be a lot of amendments and a lot of activity about this on the floor, so --

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SEN. : Mr. Chairman --

SEN. MCCAIN: Could I just finish? I was wondering if the Senator would consider withdrawing this one at this time, and bringing it up on the floor.

SEN. BROWNBACK: I'll visit with you a little bit on that.

Well, in deference to the chairman and his request to do that, I will be willing to do that, but I will also put notice forward that I will be bringing this out on the floor, as I think we shouldn't be taking this money from Medicare to creating billionaire lawyers. I don't think that's appropriate. So I will be bringing that forward on the floor.

SEN. MCCAIN: Without objection, Senator Brownback's amendment is withdrawn, and Senator Gorton wants to re-open it, I'm afraid.

SEN. GORTON: No. Mr. Chairman --

SEN. MCCAIN: Senator Gorton is recognized. SEN. GORTON: I think it is appropriate for Senator Brownback or others to know what the views of others on the committee are. You know, I'm not in much of what I do, much in sympathy with trial lawyers. But, in this form, I would certainly have to oppose this amendment here or on the floor, though I think there may be a forum and a kind of limitation that is not reasonable at all.

Most of the lawyers, or at least a large number of the lawyers, and certainly the leading ones who are representing the tobacco companies, whether we like it or not, are making more than \$250 an hour. I think an arbitration system may be appropriate, but I would say that the lawyers who conceived this idea in the first place, and took it on when it was a very risky and dubious measure, are clearly entitled to some form of contingency. In cases of dubious outcomes like this, where you're likely to get nothing if you lose, are appropriate subjects of contingency fee arrangements. Should it be 25 percent of the \$100 billion? No, it should not. But I think a contingency is appropriate there. I think someone who came into it very late, when it was obvious that it was a winner, and you were just -- you know, shooting fish in the barrel, falls in an entirely different category, and probably is not as entitled to much.

But I think they are entitled, roughly speaking, to as much as the lawyers representing the tobacco companies, maybe more, because the tobacco company lawyers are going to get compensated whether they win or not, and maybe your view is that lawyers are not. And that there should be -- and that what is reasonable in the case of one lawyer late in the game, is not reasonable in the case of a lawyer who started it out.

So, what I'm saying here, Mr. Chairman, is, I'm trying to help Mr. Brownback come up with something that it seems to me more reasonable than a "one size fits all," if we're going to deal with attorneys' fees.

SEN. MCCAIN: I think -- I think you can help him a great deal on that, and again, I know there's going to be a lot of debate on that. And I say to all my friends, no one believes that anyone should receive a couple of billion dollars for a settlement, or even -- there's some outrage out there in the country about what is already being claimed, and Senator Brownback I think is on the right track. And I -- (inaudible). Thank you very much. Senator Brownback.

SEN. KERRY: Mr. Chairman, I'd just like 60 seconds to make something also clear for the record. A couple of things.

I think it is entirely inappropriate for the United States Congress to change private contracts after the fact, number one, particularly when they don't come out of Medicare. As the Senator from Kansas said, this is not outside of any payment the tobacco companies are making in terms of the state settlement. It is outside of that entirely. It's fully outside of it. Secondly, all of the settlements in the country are under arbitration now, are being settled either by the court, or by an arbitration panel. And the notion -- I mean, this will be a fight on the floor, I know that. But it is just entirely inappropriate

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for us to come in and meddle with those contracts where they are being resolved under arbitration and in the court system. And I think if it were anything except a lawyer, there isn't a person on the other side of the aisle who would vote to do that, under other circumstances.

SEN. BROWNBACK: If I could respond briefly to that. In the amendment, we note a state that receives funds under this act may not pay attorneys' fees. So it's funds received under this act that we're pointing out to, is why I think that this is appropriate for us to consider, and we will be taking this on forward to the floor.

SEN. KERRY: I call the question.

SEN. MCCAIN: Please. John, you know he's withdrawn the amendment, and perhaps we might save this for --

SEN. KERRY: Maybe he ought to bring it back out.

SEN. MCCAIN: (Laughter.) Yes, I was going to say, if we invited him any further, we're going to be voting on it. The

Could I ask the indulgence of the committee? Senator Breaux - - excuse me, Senator Dorgan has two amendments that he'd like considered, one that will require a vote, and the other. And if you'd name the amendments so we can have the clerk pass them out, Senator Dorgan is recognized.

SEN. DORGAN: The amendment I'd like to offer first is the one dealing with the NIH, the National Institutes of Health, and I believe the staff has the amendment, if they could pass it out.

This is Number 6, Dorgan Number 6.

SEN. MCCAIN: Dorgan 5 and 6 on the last page.

SEN. DORGAN: Last page.

SEN. MCCAIN: Next to last -- next to last page. Dorgan 5 and 6 on the next to last page.

SEN. DORGAN: Mr. Chairman, while they're passing the amendment out, I will not require a roll call vote on this, but I do want to say that, as I indicated at the start of this discussion this morning, the draft that is provided us today provides some expenditure. For example, it says "there shall be expenditure for issues with respect to tobacco farmers." I support that. "There shall be expenditure with respect to grants for communities that are affected." I support that. "Expenditure for tobacco workers who are displaced." I support that. But if we're going to do some expenditures, what I said this morning, is I'd very much like us to do a number of expenditures. I especially am concerned about targeted expenditures, with respect to the NIH. I understand the chairman has put some research NIH money in this bill. I propose the provisions that are effectively the provisions dealing with the NIH that were in the Conrad proposal, with some minor exceptions.

I would hope that, although I will be defeated I expect by voice vote on this amendment, I would hope that when we get to the floor of the Senate and I again offer this amendment, I hope that the expression of the full Senate will be that a substantial investment in the NIH reflects an important priority of spending, with respect to the proceeds from this tobacco settlement.

Now, I will not go further, Mr. Chairman. But I did want to offer it. I do want to have at least a voice vote on it.

MR. MCCAIN: Those in favor -- is there further discussion? If not, those in favor of the Dorgan Amendment signify by saying aye.

(Voice vote: ayes.)

MR. MCCAIN: Those opposed? No.

(Voice vote: nos.)

SEN. DORGAN: Looks like I've won it, Mr. Chairman.

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SEN. MCCAIN: The ayes have it.

SEN. DORGAN: Thank you, Mr. Chairman.

SEN. MCCAIN: The amendment is agreed to.

SEN. DORGAN: Mr. Chairman -- Mr. Chairman, let me offer my second amendment before we --

SEN. MCCAIN: What -- are you on a roll? Is that what you want?

SEN. DORGAN: No, no, no. Before we have any time left, let me offer a second amendment. And my second amendment deals with the anti-trust exemption in the legislation, and the amendment is being passed out. It's less than a sentence, or just a small -- a short sentence on page 355 beginning with line 12, strike through line 25 on page 56. And essentially, I want to strike the anti-trust exemption that is in the bill. My purpose is to reflect the concerns of the Federal Trade Commission report on this issue, from September 1997. And also concerns that others have. I understand that a tobacco settlement will impose costs on the industry, and those costs will just be passed along to the consumers. But I don't believe that an anti-trust exemption, however limited, is necessary in order for that to happen in an appropriate way. And I support and believe the FTC analysis is appropriate here.

From an anti-trust and economic perspective, a proposal that Congress enact a statute enabling private firms to agree to raise prices to pay past liabilities, should be viewed with caution. Clearly, they can pass along the costs of doing business, and should and will, I expect. But I don't believe they need anti-trust exemption to make that judgment individually, firm by firm. And I believe we should strike that provision in the bill.

SEN. MCCAIN: The attorney general from the state of Washington is recognized.

MS. GREGOIRE: Mr. Chair and Senator, we grappled with this issue long and hard at the table. At the bottom line, what we concluded is we have one of two options. We either had to give a limited anti-trust exemption, which is contained in this bill, or we had to have a rather elaborate mechanism by which these individuals could, for example, submit a plan to the Treasury that would have to be approved, or a plan to -- for the look-back purposes, a plan over to the Attorney General that would have to be approved.

But if, in fact, you strike the anti-trust exemption, you will leave them handicapped without something put in there, by which they in fact can make a plan, and be not held liable for having set forward, together, how they're going to achieve the reduction in youth tobacco marketing, as well as how they're going to achieve the pass-through of the per-pack increase in cigarettes. So, it's one of the two, and this particular bill has the anti-trust exemption. And, Mr. Chair, if you choose to do otherwise, I would be happy to offer myself and my staff to be of assistance to you as an alternative.

SEN. MCCAIN: I don't choose to do otherwise. (Laughs. Laughter.)

MS. GREGOIRE: Thank you.

SEN. MCCAIN: Thank you very much. Is there further -- is there further debate on the issue? I don't know how the senator from North Dakota can withstand that withering attack. (Laughter.)

SEN. BRYAN: Well, actually, quite easily, Mr. Chairman. I would say the Federal Trade Commission says that we ought to move very cautiously in this area, and frankly, I don't believe that the kind of anti-trust exemption that is provided that I think has the capability of adding to profits here, in addition to dealing with some of the issues the attorney general suggested, I think it's a serious issue. And I would hope we would strike it, and we can visit about this on the floor of the Senate. We will, in any event.

SEN. MCCAIN: Sure.

SEN. BRYAN: And so, the reason I've raised it, I think I agree with the Federal Trade Commission. This is a very serious problem.

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SEN. MCCAIN: Senator Dorgan, do you -- will you accept a voice vote on this issue?

SEN. DORGAN: I'd like to have a record vote on this.

SEN. MCCAIN: Okay, we'll call the roll.

CLERK: Mr. Stevens?

SEN. MCCAIN: No by proxy.

CLERK: No by proxy. Mr. Burns?

SEN. BURNS: No.

CLERK: Mr. Gorton?

SEN. GORTON: No.

CLERK: Mr. Lott? Mrs. Hutchison?

SEN. HUTCHISON: It's no.

CLERK: No. Mr. Ashcroft?

SEN. MCCAIN: No by proxy.

CLERK: No by proxy.

SEN. MCCAIN: Senator Hutchison is no.

CLERK: No. Mr. Frist?

SEN. MCCAIN: No by proxy.

CLERK: Mr. Abraham?

SEN. ABRAHAM: No.

CLERK: Mr. Brownback? SEN. BROWNBAC: No.

CLERK: Mr. Hollings?

SEN. : No by proxy.

CLERK: Mr. Inouye?

SEN. INOUE: No.

CLERK: Mr. Ford?

SEN. FORD: No.

CLERK: Mr. Rockefeller?

SEN. ROCKEFELLER: Aye.

CLERK: Mr. Kerry? Mr. Breaux?

SEN. BREAUX: No.

CLERK: Mr. Bryan?

SEN. BRYAN: No.

CLERK: Mr. Dorgan?

SEN. DORGAN: Aye.

CLERK: Mr. Wyden?

SEN. WYDEN: Aye.

CLERK: Mr. Chairman?

SEN. MCCAIN: No.

CLERK: Mr. Kerry votes aye by proxy.

SEN. MCCAIN (?): Senator Dorgan, could I re-visit just a minute? I was under the impression that this was a sense of the Senate resolution. Is that not correct?

SEN. DORGAN: Oh, no. Mr. Chairman, the reason -- no, it was not a sense of the Senate. It was real. (Laughter.)

SEN. MCCAIN: Then I would ask for a roll-call vote on the first --

SEN. BREAUX: How about this one here --

CLERK: For this, yays are four, nays 15.

SEN. BRYAN: Mr. Chairman, if I might for a moment, I find the argument of the attorney general from Washington persuasive. But I am concerned when the Federal Trade Commission raises some concern. I would hope that we would have the chance before this gets to the floor to visit with them and to explore the nature of their concern. I think the attorney general correctly characterizes

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the issue. If we don't provide some limited immunity, then we have got to construct some other mechanism that does not involve consultation on their part. And I am not sure we want to get into that. But the FTC's concerns are I think worthy of further consideration, Mr. Chairman.

SEN. MCCAIN: I would ask for a roll-call vote on the first Dorgan amendment. The clerk will call the roll.

SEN. BRYAN: Mr. Chairman, you're welcome to call a voice vote. I had indicated to you that --

SEN. MCCAIN: Thank you. Then, the nays had it -- (laughter) -- correct.

SEN. BRYAN: Maybe we could hear that. (Laughter.)

SEN. MCCAIN: All those in favor of the Dorgan amendment say aye. (Ayes.) Those opposed? (Noes.)

SEN. DORGAN: Well, I won for about 10 minutes, Mr. Chairman. (Laughter.)

SEN. MCCAIN: Thank you, Senator Dorgan. And I appreciate your understanding of that. I thought it was -- I was reading it that it was included in the sense of the Senate. And, by the way, I would be glad to entertain the motion to include it in the sense of the Senate if it is not adequate.

SEN. DORGAN: Well, I was ecstatic. (Laughter.)

SEN. MCCAIN: Thank you very much. Now we have several -- Senator Inouye has an amendment.

SEN. INOUE: Mr. Chairman, as you are well aware, I have two amendments. The first one --

SEN. MCCAIN: Senator Inouye has two amendments.

SEN. INOUE: The second amendment was to delete the funding provisions of the first amendment, and just establishes the structure of the tobacco asbestos trust fund. Would the chairman be willing to accept that amendment? It has no money in it.

SEN. MCCAIN: I ask the staff if they're familiar with the amendment. MR. : I haven't seen it, but if you are establishing an asbestos trust fund, it's a --

SEN. INOUE: It's just a structure; there is no funding.

MR. : I think it's just the structure -- it's my understanding it's like a placeholder but there is no funding involved.

SEN. MCCAIN: Could I just look at the amendment, Senator Inouye, so I don't make another mistake? The establishment of a trust fund, and finds no problem with that. Could I ask Senator Inouye to make sure that we would be allowed to make technical and conforming amendments. That's a fairly long amendment. Is there further -- go ahead --

MR. : Not certain whether it's intended to be written this way. There is language which says funds should be established, senator. Maybe we could work it out to make sure that it's just a framework and not necessarily funds.

SEN. INOUE: Just a structure.

SEN. MCCAIN: Is there further debate on the amendment? If not --

SEN. FORD: Mr. Chairman, may I ask a question? And I am not going to oppose this amendment? But are we now setting -- getting into the posture of going beyond the agreement by the attorneys general and the states and so forth by setting up asbestos-related -- and then the next thing it will be black lung-related, and the next thing it will be something else? Are we beginning to put more on this mule than he can carry? Is that what we are beginning to do here?

SEN. MCCAIN: That's a concern of mine. He says it's only a framework, though, and so it's --

SEN. FORD: But it's another framework, another framework, and I have a -- I'm not going to object to this amendment -- I want to help my friend here if I

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can. But I just want to voice my concern that we are moving down a track that we are going to run out of coal on this train.

SEN. MCCAIN: All those in favor of the amendment say aye. (Ayes.) Those opposed? The ayes have it. The amendment is agreed to. SEN. INOUE: Thank you, sir.

SEN. MCCAIN: Do you have another amendment, Senator Inouye.

SEN. INOUE: No.

SEN. MCCAIN: I thank Senator Inouye.

Now we come to Title Nine, and there are three Ford amendments on that title.

SEN. FORD: Let me check on that, Mr. Chairman. I'm trying not to offer any.

SEN. MCCAIN: I see remaining before us several Kerry amendments, a number of Ford amendments, a Hollings amendment, and more Ford amendments.

SEN. FORD: Are we under Title Nine now, Mr. Chairman?

SEN. MCCAIN: Yes, sir. Actually we are in Title Nine with three amendments. We have a Hollings amendment in Title Eleven, and in Title Eleven we have four Kerry amendments, and then we have some more Ford amendments, and that is all that remains for us to be addressed. If Senator Kerry's staffer would mention to Senator Kerry that we -- oh, hi -- (laughter) --

SEN. FORD: Mr. Chairman, I understand that we are on the verge of working out my concerns under Title Nine, and we are very close. And one of the reasons I'm not offering amendments -- I'm one of those that'd like to work things out and move forward. But we are getting to a point, Mr. Chairman, where I am not going to take anymore, and we are going to take some time on some amendments that as of 1:00 this morning they were in, and when I got up this morning they were out.

And so -- or they were changed. And I need to have some salve put on the wound.

SEN. MCCAIN: Perhaps, Senator Ford, it would be agreeable for us to try to dispose of the remaining amendments with the exceptions of those that you have serious concerns about, and then perhaps the committee could break for about a period of time, and we could come back and resolve those and have --

SEN. FORD: Mr. Chairman, I always find when you break for a term that the lobbyists are like a duck after a June bug.

SEN. MCCAIN: Sir, we'll stay in until we --

SEN. FORD: It'd be very difficult for us to live -- we would be running the gauntlet down the hall.

SEN. MCCAIN: Thank you, sir. We'll remain here until we can get this finished then. But I would point out we're coming near the end here. Senator Kerry, do you want to address your amendments at this time? We did the child care.

SEN. KERRY: Mr. Chairman, I appreciate it. I am going to definitely withdraw three of them. I'm just trying to make a decision on the one last one.

SEN. MCCAIN: Okay.

SEN. KERRY: I was not here this morning also for the discussion on the look-back provision, and I just would like to say I would have associated myself with the comments of those who tried to strengthen them, and I look forward to that discussion --

SEN. WYDEN: Would the gentleman yield to me just for a quick moment?

SEN. MCCAIN: Senator Wyden.

SEN. WYDEN: I withdrew the look-back amendment this morning, but I want my colleague to know how strongly the public health experts feel about this. And I particularly hope we can debate the various kinds of targets. And I would like of course to have them strengthened. But what is truly essential is that this be company by company. Chairman McCain has had a very difficult job of trying to keep the differing views, the warring factions so to speak, still working together. But however you feel with respect to what the specific target ought to be, let us go forward and try to make sure we have company-by-company assessments. The Centers for Disease Control says that's possible. And with

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that, Mr. Chairman, I think we are done with look-back for the day.

SEN. MCCAIN: Thank you.

SEN. WYDEN: I thank the senator from Massachusetts.

SEN. MCCAIN: This brings us to --

SEN. KERRY: Mr. Chairman, on the final amendment, I will not offer the last amendment at this time, but I would just like to say, first of all, I want to thank Senator Frist for his amendment that was accepted earlier, providing a bonus to states that achieve a 95 percent compliance rate for retailers not selling cigarettes to children. I am particularly concerned. I was going to raise the issue of whether -- I know we have a 90 percent target in the bill. The question can very legitimately be asked whether that shouldn't be 95 percent, and that's something that I want to work with colleagues on in the course of the next weeks before we do get to the floor. And the reason for that -- that one in ten not complying, many people believe is a significant outlet that reduces your capacity to reduce the availability of cigarettes. Many people in the enforcement area believe you can achieve a 95 percent level. We sort of embrace the notion of encouraging people to do it. The real question is whether or not they shouldn't have to do it. And I believe we would be better off if they did. But I will reserve that for when I think people have had time to digest overall what we have done here today, and then have a better sense of some of these issues. And I think it would be better to debate it in that context.

SEN. MCCAIN: I thank you, Senator Kerry.

Now that brings us to one Hollings amendment, which is Hollings Two, and a number of Ford amendments. I understand that these are difficult amendments. I understand it's a very tough situation we are under.

And I also understand there are some people who are negotiating in the back with Senator Wyden's staff, from Senator Ford and Senator Hollings' staff, as well as the administration people. So I would like to ask Senator Ford, Senator Wyden and Senator Hollings how they would wish to proceed. Senator Hollings is recognized first.

SEN. HOLLINGS: Mr. Chairman, thank you. I want to be fair of course to the distinguished senator from Oregon. As I understand it, the administration and the United States Trade Representative both -- got me a document here, and I -- misgivings that they have with this particular international tobacco provision. While they go along with the sentiment, they have a concern that they are not able to lower tariffs or negotiate properly. I could go on and on, but I think the best thing to do is let's get together with Senator Wyden and see if we can't work the language out and take care of Senator Wyden's amendment and the administration's and USTR's concerns.

SEN. WYDEN: Mr. Chairman?

SEN. MCCAIN: Mr. Wyden?

SEN. WYDEN: I think Senator Hollings, as always, is being very thoughtful, and that's exactly what I'd like to do. In fact, I think what has been the problem today is we have all been so occupied -- whether it's look-back or the monetary penalties issue -- that we haven't been able to do that. And I would very much like to work now with Senator Hollings' folks, and Senator Ford's folks, and your people, Mr. Chairman, because I think there are some ways that we can address some of their concerns, and I am prepared to do so. And still at the same time -- at the same time make sure that this bill is not financed essentially on the lungs of these kids around the world, and I'm anxious to do just as Senator Hollings is talking about.

SEN. MCCAIN: Senator Ford?

SEN. FORD: Mr. Chairman, would it be agreeable that once we have some language

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that the three of us are comfortable with, and then you or whoever you designate to sign off on our agreement would automatically then become a part of the bill?

SEN. MCCAIN: I think that's -- if that's acceptable to you all, it's perfectly acceptable to the rest of the committee. SEN. FORD: Without objection, then, Mr. Chairman, I offer that --

SEN. MCCAIN: If there are -- are there any further amendments?

SEN. WYDEN: On the bill?

SEN. MCCAIN: On the bill.

SEN. WYDEN: I have --

SEN. FORD: Mr. Chairman, we are back here tearing our hair out right now trying to get something done as it relates to the farmers. And if my farmers are not taken care of, then this carpet is going to turn red.

SEN. WYDEN: Mr. Chairman?

SEN. MCCAIN: Senator Wyden.

SEN. WYDEN: Just the technical matter with respect to the drafting on the accountability provision -- I think we all agreed that it was a technical matter and that it would be accepted at this point as we finished up the bill.

SEN. MCCAIN: I apologize, Senator Wyden, I was unable to -- would you repeat?

SEN. WYDEN: On the accountability provision, which is the provision that meshes with the look-back, we can watchdog these companies. There was a technical drafting problem. We talked about it last night with your folks -- you and I said that this would be corrected at the end of the bill in simply a drafting provision with respect to how this would be considered. And I don't believe it is at all controversial.

SEN. MCCAIN: I understand also that there is a couple of outstanding issues -- one that Senator Frist and Senator Hollings and Senator Ford have concerning the smokeless or spit tobacco issue. And I also think that we are working with Senator Hutchison to work out her concerns on a previous amendment. Senator Hutchison is on her way back to get that resolved. And if we could ask Senator Frist.

(Audio break) -- show me the provisions of their regulations that are in litigation right now. I think it is very important that we not show prejudice to those matters in litigation. I would urge my colleagues to let the legal cases go forward without any prejudice being shown on the part of this Congress.

SEN. MCCAIN: All those in favor of the Hutchison amendment signify by saying "aye." (Ayes.) Those opposed "no." (Nos.) In the opinion of the chair the noes have it. Senator Ford is --

SEN. FORD: Mr. Chairman, I now have the amendment that we were discussing that we have agreed to, my amendment 19. In --

SEN. MCCAIN: Senator Ford is recognized.

SEN. FORD: -- for all tobacco companies. I think we've discussed this enough, Mr. Chairman. And I'm ready, as I understand the distinguished senator from Texas is willing to let this amendment become a part of the bill and that she -- and we will discuss it then between now and floor time, and if we can't work it out by then, why we will both take our best (hold and go?).

SEN. MCCAIN: Thank you, Senator Ford. And I want to thank Senator Hutchison for her willingness here. But I believe, Senator Hutchison that what we need in this case, if I may say it, if I may intervene, is an outside, objective assessment of exactly who should be paying what here. And I think Senator Hutchison is in agreement with me. And what I think we could do is get some outside panel to give -- I don't know if it's the FTC -- I'm not sure which -- the USDA -- I'm not sure who it is -- and then we could get an outside assessment, and that would bolster or actually impair the argument of either side. But this issue has been intractable now for a couple of weeks, and I appreciate the fact that Senator Hutchison is willing to agree to this.

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SEN. HUTCHISON: Well, Mr. Chairman, if I could just say --

SEN. MCCAIN: Senator Hutchison.

SEN. HUTCHISON: -- that I do think we need to continue working on this, because I think we are in danger of creating a two-tier market where a pack of cigarettes is taxed at one rate for a large company and one rate for a small company, so anyone could go out and buy the cheaper one, and that defeats the purpose of what we are trying to do. So I would hope we can work on something that would bring equity into the taxing system. And I know that Senator Ford is especially concerned about smokeless tobacco, but this amendment applies to cigarettes and snuff as well as the smokeless tobacco. And I think we are really in danger of having a two-tier system and one that is not the tradition of America, and that is an equal and level playing field.

SEN. MCCAIN: Senator Gorton?

SEN. GORTON: I just want to express full agreement with Senator Hutchison on this. We shouldn't be discriminating among groups of sellers.

SEN. MCCAIN: Is there further debate? If not, the question is the Ford amendment. All those in favor say aye. (Ayes.) Those opposed say no. (Noes.) In the opinion of the chair, the ayes have it. The amendment is agreed to. Senator Wyden we now come to the final issue here before going to final vote. Unfortunately there has simply not been the kind of progress on the international issue that we had hoped there would be. Senator Hollings and you and Senator Ford have been gracious enough to agree to another week of intensive negotiations.

If somehow there is still not agreement, then it is just something that is going to have to be fought out on the floor held. We have strongly held views -- and Senator Ford has strongly held views, as does Senator Hollings -- on this issue. So I appreciate the willingness of us frankly -- I'll be candid here -- kicking the can down the road here until there is some agreement on this issue.

I'd be glad to hear from Senator Ford and then Senator Wyden. Senator Ford?

SEN. FORD: I don't want to talk about this amendment. I think we have an agreement here. The chairman is going to be a part of that agreement. If he accepts it after we agree to it, then it goes in the bill within a week. And so I think we tried our best to be accommodating here, and I am grateful to Senator Wyden for his compassion to an old man. So we'll go from there.

I have got one other little amendment that Senator Frist and I would like to talk about, Mr. Chairman. It won't take but just a minute. I think --

SEN. MCCAIN: Is this the addition of language that says at under this bill it is subject to Section 801?

SEN. FORD: No, no.

SEN. MCCAIN: There's -- it's a technical correction, and I would ask that this be unanimous consent that this additional language be included in the bill, without objection.

SEN. WYDEN: Mr. Chairman?

SEN. MCCAIN: Yes?

SEN. WYDEN: Just very briefly, to respond to Senator Ford and Senator Hollings, let me express my thanks to both of them. We are going to be working closely with them on the export issue. My sense is there are a number of areas where we can reduce some of the red tapes. There are issues about criminal law and the like. As Senator Ford then knows, my interest is protecting the kids. I want to be able to say that a kid in Bend, Oregon counts and a kid in Boston counts -- but also kids in Bangladesh and Bangkok. We've got 500 million people in the world today that eventually die of smoking-related diseases. Let us say that we are going to stand up for the kids. Senator Ford and Senator Hollings have been very gracious. We are going to work on this.

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Then, Mr. Chairman, as you know we have just a technical matter with respect to the accountability provisions dealing with secretarial discretion. I think it is agreeable to all sides it does not go to the merits. And if we could have that accepted now, I'd be very --

SEN. MCCAIN: A technical amendment -- perfecting amendment -- and without objection it's included.

SEN. FORD: Mr. Chairman?

SEN. MCCAIN: Now I would like to turn to Senator Ford, who I think has two more amendments that are acceptable. And then we will be ready to vote for final passage. I would like to wait before we begin that vote for Senator Hollings' arrival. Senator Ford?

SEN. FORD: Okay. Mr. Chairman, I won't get into the one that Senator Hollings is interested in. Senator Frist has done an excellent job on FDA. And we both have some concern about the depository of the documents. And the language that I now ask, Mr. Chairman, to be modified under my amendment, number 28, to apply existing penalties related to FDA in the event of unauthorized release of documents received from the depository. And it -- Section Three would be changed to C -- parens (C) -- the release by the board of any employee or -- board or any employee, the depository of documents for which attorney-client privilege or trade secret protection has been recognized by the depository, shall be deemed a violation of 18 U.S.C. 1905. I thank Senator Frist. I believe I'm not doing anything but that what he has agreed to, and I don't want to jeopardize his fine work.

SEN. MCCAIN: Senator Frist.

SEN. FRIST: Mr. Chairman, the new chapter relating to tobacco products requires that all information obtained by the secretary that is exempt from disclosure remain confidential. Senator Ford is right on point. It was an oversight that the confidentiality provisions were not referenced back to Section 301 prohibitive acts, which would clarify that any violations of the confidentiality provisions are subject to existing criminal penalties. I support the amendment and encourage its adoption.

SEN. MCCAIN: Senator Dorgan, did you want to say something?

SEN. DORGAN: After you're disposed of this amendment.

SEN. MCCAIN: If there is no further debate, then all those in favor of the Ford amendment signify by saying "aye." (Ayes.) Those opposed "no." The ayes have it. The amendment is agreed to, and Senator Ford is recognized for another one.

SEN. FORD: We've got to wait for Frist. I don't want to do it without him being here.

SEN. MCCAIN: Do you want another amendment?

SEN. FORD: No, I've got this one -- waiting for Senator Hollings.

SEN. MCCAIN: Okay, Senator Dorgan, did you want to say a few word?

SEN. WYDEN: Mr. Chairman, I thought you indicated we were about to go to final passage, and I wanted to say that I think the way you've handled the bill today has been exemplary. You have been very fair and very patient in a very long proceeding. And I intend to vote aye on the bill, although you know that there are several areas where I believe it still should be strengthened, and will try to do that on the floor of the Senate. I wanted to make that point before final passage, but especially to say you've been very fair and very patient in the way you've handled this committee, and I appreciate that.

SEN. MCCAIN: Senator Dorgan, I thank you -- I thank you very much, and I'd like to comment on that in just a minute. Senator Gorton?

SEN. GORTON: Well, if we are simply waiting for final passage, I would --

SEN. FORD: Where is Frist?

SEN. GORTON: -- second Senator Dorgan's statement about you, Mr. Chairman, since as you know many other committees have dealt with this subject and have

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failed. It's a great tribute to you that you will have succeeded in reporting a bill. Personally I would prefer that we were voting it out without recommendation rather than to pass. But I think that's a technical difference rather than otherwise, and I intend to vote for it. My views on it remain those that I expressed this morning. I think the bill in its present form will not reach its goals because this must be a partnership that is agreed to by those who are on the wrong side of the issue, in order to make either the advertising restrictions effective -- or for that matter most of the monetary restrictions, as any kind of Chapter 11 proceeding will result in such money as there is going in the wrong direction. But because I think everyone knows here that this is nothing like what a final project is going to be, I intend to vote for it. I simply repeat that I do not believe there will be truly effective legislation in this field until an agreement is reached between the president of the United States and the companies that are going to have to come up with this money on something that both of them can live with. I hope that takes place soon and with as little politics in it as possible. I can say in the same breath I think that's unlikely, but one can at least hope. So I do intend to vote for the bill. I do want to tell the chairman that I don't think he has ever done anything as difficult as this, with all the difficult challenges that he has had, and in coming out with an affirmative vote is a great tribute for him from members on both sides.

SEN. MCCAIN: I thank the senator from Washington for his kind words. Senator Rockefeller and then Senator Kerry.

SEN. ROCKEFELLER: Mr. Chairman, I want to say two things. One is I rarely disagree with the senator from the state of Washington, but I think there is at least one thing you've done which is a lot more difficult than what you have been through in the last week or so. (Laughter.)

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Secondly, I have been really proud of your leadership during this particular day, which I think is sort of the critical day in which things come out. And there has literally not been -- and I have been here virtually all the day -- a single instance -- not a single one in which you have expressed impatience, dissatisfaction. You've handled a multiplicity of requests all coming at the same time -- making sure that each senator is accommodated, has a chance to speak, gets a voice vote or whatever. And I value that in the whole area of comity in a world where it is increasing not existent. And so I really congratulate you for that. It's tough mental emotional duty, and you've performed it magnificently.

Not because of that reason, but because over the last number of days I have been thinking about this bill I want to say that I started out as a very firm no on this bill, for the purpose of proving a point, and that is that we have got to, quote, "get more." I think one can always make that opinion in life. One can always have that as a goal. On the other hand, when I think of the people in my state, and in your state, Mr. Chairman, and all the other places around the country, this is essentially a piece of people legislation. It's tremendously important that it pass, that we get an agreement. If all of the public health people are not happy, then I regret that. But we can only do the best that we are able to do given the situations that surround us. If we are struck down by courts, then that will happen. But we have to do the best we can so I will, having some reservations, as the Senator from North Dakota indicated, I will very clearly and proudly vote yes on this bill.

SEN. MCCAIN: Senator Rockefeller, I am very appreciative of that, because I understand that -- very keenly aware of the reservations that you had and still have, and I view it as a vote of confidence in the entire committee and their

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efforts. I thank you, Senator Rockefeller.

Senator Kerry?

SEN. KERRY: Mr. Chairman, I guess everyone on this committee understands that this is as contentious -- almost a textbook issue -- as you can get in the Congress -- huge sums of money involved, many, many different interests -- all of them colliding. And I think as we pay tribute to you, I'd also like to say that I think to each of my colleagues on the committee, I think the Commerce Committee has done well here. And I think there has been a concerted desire by everybody on the committee to try to find a reasonable ground, rather than just digging heels in and standing in the way of progress. So I think the committee as a whole has perhaps said something about how the Senate can work. And I think this committee is a microcosm to some degree of the Senate. There are all points of view on it, and hopefully that will be expressed as we go to the floor.

Secondly, I've had the privilege of working with you on a number of different issues very closely, and have watched you and admired you through that process. I want to thank you personally again for all that you did to accommodate people here, and to listen, and to lead the committee. And it's been a pleasure to be able to work with you again in this particular instance, and I salute your leadership.

I think we all know there are still issues to be fought out and we have to be cautious of being overly sort of self-congratulatory or even sanguine about where we wind up. There is a fight yet to have, and a negotiation yet to have. But I am absolutely confident that if we bring to the Senate as a whole the spirit that guided the committee, we can get through that hopefully in short order and present a very important piece of legislation for the long-term good of the country to the nation, and I think, Mr. Chairman, we are all grateful to you for helping us to do that.

SEN. MCCAIN: Thank you, Senator Kerry. You and I have had a very special relationship for a long time on a variety of issues, and I thank you very much for your kind words -- not only about me, but the committee itself, which I would like to make a remarks about in a minute.

Senator Wyden?

SEN. WYDEN: Thank you, Mr. Chairman, I'll be brief. Four years ago I walked out of the Waxman hearings with my friend Mike Synar, and I had spent the day hearing from the tobacco executives about how nicotine wasn't addictive, about how cigarettes were sort of like Twinkies, about how tobacco companies were not targeting children. And I wasn't sure that day four year ago that we'd make real progress in protecting the public health on this issue in my lifetime.

Mr. Chairman and colleagues, I want it understood that I think this bill is really progress for the public health and for the children of America. And, Mr. Chairman, you and Senator Hollings and others have been able to bring together a group of people around this dais who have pretty dramatic differences on these issues. And we certainly are going to have some more fights on the floor of the United States Senate, as our colleagues have said. But that in no way diminishes what has been accomplished today. This is the real progress for the public health that you could not have predicted four years ago. And I just want you to know that I am very appreciative to have had a chance to be part of this effort with you, and look forward to the future debates.

SEN. MCCAIN: Thank you very much, Senator Wyden.

Senator Kay Bailey Hutchison.

SEN. HUTCHISON: Thank you, Mr. Chairman. I do want to add to the accolades that have gone around the table. This could have been so complicated as to never have gotten off first base. And I think that all of us have reservations. No one is totally happy with this product. I think if anyone had been totally

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happy it probably wouldn't have been a very good bill.

I hope that we can go forward on the floor and continue to work to improve it, to create the level playing field that we have intended to create, as well as doing something major to stop teen smoking. I think when everything else is finished, if we can have a real big effort at curbing teen smoking before our young people are mature enough to make the decisions for themselves, all of this would have been worth it. And I thank you for bringing a lot of sides together and make them willing to do things that are not exactly what they would like to have seen in the first place. It has worked.

And I thank you also for protecting the states that have made agreements. There are three of those. There may be a few more. I think that that was very important in my decision to support this bill. And though I still have reservations, I think it should go to the floor.

SEN. MCCAIN: Thank you very much, Senator Hutchison. Senator Inouye?

SEN. FORD: Mr. Chairman? Oh, excuse, I'm sorry, go ahead.

SEN. MCCAIN: Senator Inouye?

SEN. INOUE: Mr. Chairman, this is a proud day for the committee. It's a great day for the committee. Under your leadership this committee has performed the impossible. Simply put, this was presidential performance. (Laughter.)

SEN. MCCAIN: Senator Ford.

SEN. FORD: I don't think I want to follow that. (Laughter.)

Mr. Chairman, some people have said I come to this committee hearing with a religious dedication to the people I represent, and I hope that is true. But sitting here thinking about the statement that was made to me a long those lines recently, I thought of the hymn "Amazing Grace." It's amazing that we are going to finish this bill today, and more amazing that you do it in one day. And you have done it with total grace, Mr. Chairman, and I am grateful to you. SEN.

MCCAIN: Why, I thank you, Senator Ford.

Senator Breaux?

SEN. BREAUX: Well, just briefly. I plan to vote for the bill, and want to thank the chairman for the way he's conducted the hearings.

I think it is really a monumental day. I mean, four years ago I think Senator Wyden pointed out where we were -- that no one four years ago would have thought that we would ever have adopted legislation that does everything that this bill does. We are talking about regulating nicotine as a drug, regulating tobacco products as a nicotine, a drug delivering device, restrictions on marketing and advertising -- several hundreds of billions of dollars in settlements for Medicare and Medicaid claims. If someone were to have said that Congress were to do this, no one would have believed them four years ago.

And I think there are a lot of people that need to be thanked. I mean, I think of the attorneys general who got this started. I mean, we didn't do this until they sort of had an agreement in place, and the trial attorneys that represented the litigants that brought this to the Congress. And, yes, the tobacco companies participated in that agreement, because it was an agreement that was sent to the Congress, and said, Here, put this into effect. A lot of people worked on that. And I think they are all to be commended. And particularly also our staff who has worked days and nights on this. I mean, the public just sees this one day. I mean, there were days and nights of everybody on this committee really putting in a lot of time, and I think that is to be recognized as well, and the chairman did a good job.

SEN. MCCAIN: Thank you very much. Senator Bryan.

SEN. BRYAN: Mr. Chairman, I would like to join with my colleagues in extending an accolade to you. I believe a few weeks ago when the responsibility of processing this legislation was entrusted to you, there were probably more

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skeptics than believers that this was possible. And not only have you approached this in a bipartisan fashion, have been fair with each of us in considering the recommendations that we have offered, but I think your own commitment in terms of time and energy, and as I said earlier this morning, tenacity -- your persistence in dealing with us, never once believing that we could not accomplish this, with a timetable that I must say that when you first indicated it I thought was utterly unrealistic. So that's a great compliment to your own leadership. And I intend to vote for this legislation. We are not all the way home yet. We have got action on the floor that will take us time to process. But this truly is an historic moment for this committee, and hopefully an historic moment for this Congress, if we can enact this legislation. The American people will be the winners, and the youth of America will ultimately enjoy better health in the future if we can get this legislation enacted into law.

SEN. MCCAIN: Thank you very much, Senator Bryan. And I've -- do we know whether Senator Hollings is on his way or not?

SEN. : He evidently is not.

SEN. KERRY: Senator Hollings was on the floor, I think with an amendment. Mr. Chairman, he has got a budget amendment right now, I think, so I think he's tied up.

SEN. MCCAIN: We're going to have to go ahead and vote. But I'd just like to make a couple of comments before we do.

Whenever we go through one of these exercises there are some significant benefits, and one of them is that you get the opportunity to encounter and to know and appreciate some wonderful people. And in this exercise that has certainly been the case for me and other members of this committee. I am specifically referring to Mike Moore, Chris Gregoire, Gail Norton and Carla Stowall (sp). I would point out that Mike and Chris have been with us now for several weeks, and they are the corporate memory and the corporate knowledge. And without all the things that they have done we never ever could have been where we are. So please accept my personal thanks.

I'd also like to point out Elena Kagan, who doesn't want to be pointed out, who has negotiated far into the night and early in the morning on behalf of the administration. And I would like to thank Erskine Bowles and Bruce Reed, and your representation of them at the table, Elena (sp). It was very important to us, and extremely helpful. I'd also like to point out Bill Shelts (sp) of the FDA -- Bill, thank you for all you've done. I would like to thank the health community that has been so active in participating -- Mike Myers and others who have also been with us. Obviously Dr. Koop and Dr. Kessler have been very important in sharing their views with us. .

But I'd like to come back just a second to the committee. I think over a long period of time we have developed an attitude and an environment of mutual trust. There is not a member of this committee that I do not trust, and there is not a member of the committee who cannot take my word and whose word I cannot take. And I think that's the key ingredient about this committee. Yes we have our fights, yes we have our disputes. There is no doubt about it -- and those are healthy and sometimes not very pleasant to watch. But the fact is that there is an environment of mutual effect and respect, and dare I say affection, that exists amongst the members of this committee that is forged through hard battles and accomplishments on the behalf of the American people.

As has been pointed out here, there is no doubt that this is only the first round -- and there are many other rounds to fight. But without us completing the first round there would have been no second round. And I also want to -- before I -- I really hesitate to mention individual members of the committee, because each contributed in his or her own way. But of course I would be

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remiss without mentioning our absent ranking member, Senator Hollings, who has taken such an heroic role in this.

And, Senator Ford, I would like to talk about you for a second personally, because I know this has been most difficult for you and the people you represent. And I know it's been in some ways almost heart-breaking for you to see some of these things that could possibly happen to citizens of your state. So I am very grateful for you.

Dr. Frist, what you did on the FDA was impossible, and I still don't believe it, and I want to thank you so much for what you did. Only someone with your credentials -- both as a health care professional as well as a United States Senator, could have achieved it.

I want to thank everybody for their participation in this effort, and I look forward to us being involved in the future in other issues of the day.

Dickie Scruggs, we're glad you're here, and we look forward to campaign contributions from you in abundance. (Laughter.)

SEN. FORD: Hey, I have a 501(3)(c) you can contribute to too. (Laughter.)

SEN. MCCAIN: But I do want to -- without getting either schmaltz or maudlin here, I do want to thank my colleagues, and I do want to say that I hope that history judges us kindly in that our intentions were of noble origins and that we are all united in our effort to try to stop children from beginning to smoke. Senator Hollings, I am told, has asked that I wait those two minutes, and those two minutes are about to expire.

And could I -- let me also say that Ivan Schlegel (sp) and John Raitt (sp) and the entire staff are the ones who really did all the work. We take the credit, they've done all the work. Thank you all at the table, thank all of our staff for everything that they have done.

SEN. BREAUX: Mr. Chairman?

SEN. MCCAIN: Senator Breaux.

SEN. BREAUX: I was just wondering if we're waiting for a minute or so if I could ask a question. I mean, I don't ask the question to derail the enthusiasm that is here, but I the question is to the process of what happens after we finish the work here. I know as a matter of fact that there are other committees that are concerned about the product. I know that the Finance Committee that I serve on, and other members of this committee serve on, feel very strongly that the financial implications of this legislation also belongs in the Committee on Finance -- and maybe there are other committees. So can the chairman say anything to what the process is from here that might be helpful?

SEN. MCCAIN: It's my understanding, Senator Breaux, that the majority leader and the Democrat leader would like to get this bill to the floor as soon as possible.

That's going to require intensive negotiations -- not only with the committee chairmen and ranking members, but also with the administration. As you know, I think one of the big fights is one that we avoided here, and that is division of the money. It's going to be another interesting fight -- and that's on attorney fees. But I think it is the intention of both the majority leader and the Democrat leader to sort of get all the chairmen and ranking members together with the -- and come up with a common proposal, and try to get the bill to the floor before we go to the next recess, if it is at all possible.

And the long-awaited Senator Hollings is still not here.

SEN. FORD: Do you want me to go ahead with the amendment, and get --

SEN. MCCAIN: Yes, go ahead with the amendment.

SEN. FORD: Mr. Chairman, we now have an agreement as it relates to the farmers. It's one that I think defines it somewhat better and strengthens the approach that we are taking for the farmer.

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And, Mr. Chairman, having grown up on a farm and understanding farmers and understanding what this means to them, and it is in some respects a taking, because the value of their land will be decreased from \$600 to \$1,000 an acre, if we lose the program or if the quota is reduced, it is a financial and heart-breaking blow to them. And when I talk to my farmers, they just want to make a living. They want to pay off the mortgage. They want to do those things that other people do. And one of those things is to educate their children. And this gives them an opportunity from the income of this crop to do those things that makes a contribution to the future of their family, their children and it is something that has been very significant.

So with this agreement, Mr. Chairman, I submit the committee amendment where we strike pages 55A through 55Z, and insert the following. And this is an agreement that has now been pounded out. And I am grateful to all those who participated. I regret that Senator Hollings is not here, because he's been a part of that. I'm -- and I have no -- I'll be glad to wait until he gets here, unless he's coming from Charlotte, South Carolina.

SEN. MCCAIN: If there is no further debate, all those in favor of the amendment signify by saying "aye." Those opposed "no." The ayes have it. The amendment is adopted.

Senator Ashcroft?

SEN. ASHCROFT: Mr. Chairman, I just want to thank you for your conduct of this hearing in the way that you did it. I know that the amendments which I brought forward which did not prevail and which were discomfoting to you in some respects, and perhaps threatened your ability -- though not very substantially -- to get this matter through as quickly as possible. And I would just comment you for your willingness to allow a full range of amendments to be considered and to the fair and impartial way in which you conducted the hearing so that each person could have those amendments voted on in accordance with the desires of individual senators. It elevates my confidence in the process of the committee, and your leadership is to be commended. And I think this serves as a model for the way we can work through other issues, and I want to thank you.

SEN. MCCAIN: Thank you very much, Senator Ashcroft.

Senator Hollings has still not been able to leave the floor. So I would ask unanimous consent that we begin the roll-call vote, leave the vote open until such time as Senator Hollings is here to vote in person. But the rest of the vote we can commence at this time. Again, I thank all of my colleagues and dear friends. The clerk will call the roll.

CLERK: Mr. Stevens.

SEN. MCCAIN: Aye by proxy.

CLERK: Mr. Burns?

SEN. BURNS: Aye.

CLERK: Mr. Gorton?

SEN. GORTON: Aye.

CLERK: Mr. Lott?

SEN. MCCAIN: Aye by proxy.

CLERK: By proxy. Mrs. Hutchison?

SEN. HUTCHISON: Aye.

CLERK: Ms. Snowe?

SEN. SNOWE: Aye.

CLERK: Mr. Ashcroft?

SEN. ASHCROFT: No.

CLERK: No. Mr. Frist?

SEN. FRIST: Aye.

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CLERK: Mr. Abraham?
SEN. ABRAHAM: Aye.
CLERK: Mr. Brownback?
SEN. BROWNBAC: Aye.
CLERK: Mr. Inouye?
SEN. INOUE: Aye.
CLERK: Mr. Ford?
SEN. FORD: Aye.
CLERK: Mr. Rockefeller? Mr. Kerry?
SEN. KERRY: Aye.
CLERK: Mr. Breaux?
SEN. BREAU: Aye.
CLERK: Mr. Bryan?
SEN. BRYAN: Aye.
CLERK: Mr. Dorgan?
SEN. DORGAN: Aye.
CLERK: Mr. Wyden?
SEN. WYDEN: Aye.
CLERK: Mr. Chairman?
SEN. MCCAIN: Aye.
CLERK: Eighteen yays, nay one. And waiting for Senator Hollings.
SEN. MCCAIN: Now they say again that he's on his way over. I would like to --
SEN. INOUE: Aye by proxy for Senator Hollings.
CLERK: Yays 19, nays one.
SEN. MCCAIN: The bill will be reported to -- placed on the calendar and reported to the Senate. And this markup is adjourned. (Sounds gavel.) (Applause.)
END

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ON COMPREHENSIVE TOBACCO LEGISLATION

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BODY:

SEN. MCCAIN: We're pleased to announce an agreement on a comprehensive bipartisan tobacco legislation that we'll be bringing to a vote in the Commerce Committee later this week.

First I want to thank Senator Hollings, Democrat -- senior Democrat on the committee; Senator Frist, who worked out the FDA language, which was an incredibly difficult job; Senator Breaux, who worked very hard on the liability issue; Senator Gorton; Senator Wyden, who is here, who has a number of areas that he's concerned with; and Senator Kerry, as well as every other member of the Commerce Committee. I appreciate their patience and commitment to the nation's cause of dramatically reducing youth smoking.

I want to express my deep gratitude to the administration, who worked very closely with us during these hard two weeks of negotiations; representatives of the public health community, including Matt Myers, the National Center for Tobacco-free Kids; as well as Doctors Koop and Kessler. Especially, and most especially the attorneys generals, led by Mike Moore of Mississippi and Christine Grigoire of Washington and their outstanding team. All of them played key roles in advancing this cause and in formulating this legislation.

This bill, the National Tobacco Policy and Youth Smoking Reduction Act, is the result of countless hours of hearings, consultations and negotiations. Youth smoking is not a bipartisan issue; it's a nonpartisan issue. The health and well-being of the nation's children is a cause that transcends party affiliation. Four hundred thousand people a year die prematurely from smoking-related disease and illnesses, and over 4.5 million teens smoke. Every day, 3,000 children take up an addiction that will kill one-third of them. Estimates are that the health care and other smoking-related costs to society exceed \$45 billion alone. That figure, as large as it is, can never capture the sickness and human suffering behind it. And the bill we have agreed upon is tough medicine for a tough problem.

It will raise retail prices on cigarettes dramatically to discourage youth smoking and imposes severe advertising and marketing restrictions on the industry. It establishes tough youth reduction goals and requires the industry to pay substantial penalties for nonattainment. In addition, nicotine and

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tobacco products will now be subject to broad regulatory and oversight by the Food and Drug Administration.

And the industry will be required to pay over \$500 billion to settle claims and fund vital anti-smoking and related health-care initiatives. That does not count the possible penalties associated with the so-called look-back provisions, which in its maximum could be an additional \$80 billion in non-tax-deductible penalties.

To obtain the myriad of public-health benefits throughout -- without challenge and obstruction, the bill will place a \$6.5 billion removable cap on the industry's yearly liability. That, by the way, will allow underneath that cap, no restriction on consumer and class- action lawsuits.

Finally, let me just give a few details, and then I'll ask Senator Hollings and then others, to make remarks.

Experts say the most important deterrent to youth smoking is to raise the price per pack of cigarettes. There's a -- right here. Going from 65 cents in 1999 to \$1.10 in the year 2003. That, by the way, is the administration's requested number of \$1.10 a pack. Next, we establish tough youth smoking reduction targets, which you see on your summary, beginning with 15 percent in year three, rising to 60 percent in year 10. Again, that's based on 4-1/2 million youth smokers. We impose substantial penalties on the industry for failing to meet these goals, which range from \$80 million per percentage point short of the target to \$240 million per point, non-taxable -- non-tax- deductible, and it's capped at \$3.5 billion per year. And we impose severe advertising restrictions so that marketing to kids will cease once and for all.

Second, our goal is to ensure that nicotine and tobacco products are regulated by the FDA to protect public health. The bill grants broad authority to accomplish that goal, including advertising and youth access restrictions, establishes tobacco regulation under a separate FDA title so that existing drugs and devices which must meet a "safe and effective" standard will not be affected, provides for FDA authority over youth access in the approval of new products.

The bill would require the president to forward a request to ban nicotine, the sale of a particular type of tobacco product or any kind of resale sale, and no such rule could go into effect for two years after the request, providing time for the Congress to vote on the matter. FDA would have no authority over farmers. Finally, the FDA rule must take into account the impact of proposed action on demand for unregulated contraband products, meaning the possibility of the rise of a black market.

Third, the bill will provide over \$506 billion in payments from the tobacco industry over the next 25 years. This sum would be passed through to tobacco prices in order to deter youth consumption, and these funds would be used to finance prevention programs and anti- smoking advertising campaigns, reimburse federal and state health care funds for tobacco-related costs, conduct health research, and other vital purposes.

As I mentioned, the bill provides a yearly liability cap of \$6.5 billion, would settle the states' suits, and there is no restriction on consumer lawsuits or class action lawsuits.

Finally, as you'll see from the summary, the bill includes strong farmer protections and other vital initiatives.

Again, I would like to thank Senator Hollings, who has obviously been the most important player in this process that we've been through of many hundreds of hours of negotiations and hearings. I'd like to ask Senator Hollings to make a couple of comments, and then Senator Wyden.

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SEN. HOLLINGS: I can't be too high in my praise of Chairman McCain and his dedication here to this particular problem. He really knows how to work under pressure and the pressure has been great from every particular angle. There isn't any question in my mind that, having voted up there for 31 years, you can vote defensively. You can always find something in every bill to say, "Well, ordinarily I'd go along, but --". That being the case, you can take this bill and defeat it 100 to nothing, because it is very complicated and not very pleasing to everybody. But be that as it may, the money is spent. I've been up in the Budget Committee and whether it's the Republican plan, the White House plan, the Democratic plan, or what have you, this money is spent and this is the first step to make sure that whatever's expended we get something done with respect to cigarette smoking and protecting the children of America. I particularly wanted to make sure there was a set-aside for the farmers because that was the only group that was not at the conference table when the agreement was made last June. That set-aside is in this particular bill. The other very, very controversial things you could adjust one way or the other. But this staff has really worked in a bipartisan fashion. We worked under the leadership here of Attorney General Moore and the states' attorneys general, the health community and what have you and everybody's been considered. They haven't been all pleased, but I can tell you, Chairman McCain has listened to every one of them, and he has really given the necessary leadership to get this matter to the floor.

SEN. RON WYDEN (D-OR): I don't want to turn this into a bouquet- tossing contest, but for the last couple of weeks John McCain has essentially been the Bionic Man. He has been working almost around the clock with many of us who have been at this issue for years. And I think this bill is a very good start at legislating on this important issue. The reason I feel that way is that history shows every time in the past Congress has sought to protect the American people, the tobacco industry has found a way to get around that legislation. That's what happened when warning labels were first required. That's what happened when advertising restrictions -- electronic advertising restrictions were first required. That's what happened with the Synar amendment on tough state enforcement. And what I'm pleased about with respect to this legislation is this bill now gives us an ongoing opportunity to hold the tobacco companies, one by one, accountable. If those companies don't meet hard targets in terms of reducing youth smoking, for the first time we will have tools to deal with it. We're going to start to say they're going to have to earn the various approaches that they've sought for so long. And finally, I'm very pleased that this bill recognizes that a child is a child is a child. Back when we first got a settlement, it was called the global settlement. But a lot of us pointed out it forgot the globe. It didn't do anything to protect young people overseas. And Chairman John McCain said that there's a moral obligation to protect those young people overseas, and it is high time. Now let me add one last thought. This bill is hundreds of pages long. We're going to be going through it now with a fine-tooth comb, because that's what the lawyers for the tobacco industry will be doing tonight and before the markup.

So we still have some more work to do, but we are off to a good start.

SEN. MCCAIN: Thank you very much, Ron.

And now I'd like to ask -- we have Attorney General Mike Moore of Mississippi and Christine Gregoire of the state of Washington. I would just want to point out that we've had the attorneys general with us constantly over the last two

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weeks because the reality is that, if they had not started this process with their settlement, we obviously would not have made the progress that we have. And I am very grateful to them.

Mike?

MR. MOORE: Thanks. I appreciate it, Senator.

Let me first say that I want to thank, again, Senator McCain. He made me a promise two or three weeks ago. I wasn't quite sure whether I believed him or not because I didn't know him very well. And the promise that he made me was that we were going to involve the attorneys general in the process every step of the way.

I have to tell you he gave me a call last week, and he said: "Can you come up here? And will you stay up here every single day, because we want you to be here every day?" So we've been camped out in the senator's office for the last seven days, working on this thing, Christine and myself.

And he is a man of his word. Not only did he include us; for those of you who have not been watching, Dr. Koop has been in and out of the office; Dr. Kessler's been in and out of the office; the folks from the White House have been in and out of the office. The Democrats have come; the Republicans have come. This has been the most inclusive process that I have been involved in, in the last year of our work.

And I want to emphasize the last year; it's almost exactly a year ago, this week, that we began negotiations with the industry for the June 20th settlement. It's about five years ago that we began this battle. You've probably heard me from time to time become frustrated, probably Christine and many of the rest of the us, because we thought that all this work might go for naught because people were too far on the extreme on the left and too far extreme on the right.

Senator McCain, somehow, with Senator Hollings's help and Senator Wyden's help, and Senator Breaux and many others that worked in this process, have somehow brought many, many people together.

And I think this is our last best effort to get the tobacco settlement done. If this process fails, if this Commerce Committee that meets on Wednesday and Thursday, fails to get a bill out to the Senate floor, Senator, I believe that this process is over. And I don't think we'll be able to do anything quite as consequential to help America's public health and America's children as we will be in this plan.

I am satisfied that if you look at the public health benefits in this plan and what it does to protect America's children, anybody -- if that's their focus, if that's their only focus -- not fighting about the past or not being mad at the tobacco industry -- but if their focus is to save children's lives and improve the public health of this country, then there is nobody in their right mind that would be against it. And I am very proud of this process.

Thank you.

MS. GREGOIRE: And, Senator, I, too, want to join with my colleague Mike Moore and say thank you for a courageous job. And I thank both you, Senator Hollings and you, Senator Wyden, and my own Senator Slade Gorton and the others who have been involved.

It has been a year of a roller coaster for the attorneys general of this nation. But in June of this last year, we came to Washington and we asked for leadership and we asked for courage. And we knew at the time it would take boldness. Today you're seeing all of that with the leadership of Senator McCain. Today the children of America can have hope. The parents and the aunts and the uncles and the grandmas and the grandpas of America can have hope that we will stop children in America from being addicted to this deadly product. It's the beginning of a process that I hope will culminate with a bill to be passed and

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signed in the White House in the very few coming months.

Time is of the essence. Children's lives are at stake. And I want to say, Senator McCain, you've brought hope to America today. Thank you.

SEN. MCCAIN: Thank you very much, Chris. Very kind.

Now I'd like to respond to question.

Yes, Nancy?

Q You started off thanking the administration for the role they've played. But Erskine Bowles gave an uncharacteristically impassioned speech today and he really wasn't very positive about what you all put forward.

SEN. MCCAIN: Oh, I thought his comments were very supportive. And I've had several conversations with him. He's been extremely supportive and his people have been with us all the way. I'm very pleased with his remarks and his reception to what our proposal is.

Q Senator McCain, during the course of your negotiations you considered very seriously going back in the direction of the settlement and adding more legal protections than just the cap. Can you tell us why in the end you decided not to do that?

SEN. MCCAIN: I think the consensus was, on both sides of the aisle, after consulting especially with Senator Hollings and Senator Wyden, and my friends back here who, as you know, had a little bit different provisions in their settlement, that this was the most viable option. Our job had to be from the beginning, and must be the day that this legislation is signed by the president, bipartisan support of the public health community, support of the administration and the attorneys generals. That's the way we can achieve this goal.

Yes, sir?

Q Senator McCain, the industry has already spoken out against the draft. They haven't walked, but they've sent very clear signals that this is pretty much above and beyond what they can take. If they do walk, what happens then?

SEN. MCCAIN: Well first of all let me say my job and our job was to devise the best proposal we could to prevent children from smoking. That was our sole and only goal here, and that's why we did not negotiate with the tobacco companies during this process. If the tobacco companies decide that this is not acceptable, and outside experts that we will consult also corroborate that, then obviously we would be willing to look at any proposal that would improve it. But let me hasten to point out, we looked at all these proposals, we looked at all of these different ideas, and this is the best proposal that we can come up with. So it would almost have to be providing us with new information.

Yes?

Q Do you have the promise of Senators Lott and particular Nickles, who's the head of the task force, that this will come up on the Senate floor for a vote?

SEN. MCCAIN: Say that again?

Q Do you have the promise from Senator Lott and the help of Senator Nickles to bring this up on the floor for a vote?

SEN. MCCAIN: I know that Senator Lott, from my conversations with him as short a time as an hour ago, wants to get this to the floor of the Senate and out of our committee. I know that Senator Nickles has played a key and important role throughout this. His leadership has been vital, and I'm sure that he will play an extremely important role in this whole strategy as we move forward.

Q Senator --

Q Is the industry's criticism of your bill really helpful to its chances for passage? Don't you need the industry to dislike for it to have a political chance of getting through Congress?

SEN. MCCAIN: I don't know what the psychological impact is on my colleagues,

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except to say that we move forward with one and only goal in mind, and that is that we could not -- that we had to stop 3,000 kids from starting smoking every day and do everything we could to stop that. We could not -- then that impelled us not to say, "Okay, what will you accept or what will you not accept," as far as the industry is concerned. They can make their case, and this, once it goes through the committee, will go to the floor of the Senate, and I'm sure that they will be making their case. But I could not craft a proposal that, frankly, was -- could be vetoed or even modified by their concerns.

Q Senator McCain, why the \$3-1/2 billion cap on the look-back? And is that negotiable, since that's what Erskine Bowles is saying is the most troubling thing for --

SEN. MCCAIN: Well, I'm -- I think that there are a number of areas where they may have some concerns. I think we've satisfied most of them, at least from my most recent conversation with them. But obviously we would be pleased to negotiate. But I think that, frankly, the significant support we're going to have from the Democrat side as well as Republican side is going to reinforce our position as to the specifics of the bill. But it doesn't mean they don't have to change.

Yes, sir? Q But why the \$3-1/2 billion cap? And why did you feel that that was necessary?

SEN. MCCAIN: Because there had to be a cap, and we looked -- talked to the experts and said, "What is reasonable?" And all the experts that we could find told us that that was the most reasonable amount, taking into consideration, for example, that we don't want to break companies that are not bad guys in this whole procedure, either.

Yes, sir? Yes?

SEN. WYDEN: Just real brief -- briefly, the bottom line here is, we've got to remove the incentives on selling to kids. That's what's been on the books, that's been essentially the law for years. And I will tell you that I'm going to be looking, with my committee colleagues, to strengthening a number of the provisions. I'd like tougher penalties on look-back; I'm concerned about secondhand smoke, we've still got some issues with respect to liability, but I'm going to be working with my colleagues, Chairman McCain and our ranking Democrat, Senator Hollings, because we want to get a bipartisan bill out.

MS. GREGOIRE: Can I offer one suggestion --

Q Senators?

SEN. MCCAIN: We have plenty of time.

MS. GREGOIRE: -- on the look-back. Remember now, the early stages of any violation is \$80 million per percentage point. That rises to 160 and ultimately, the last 10 percentage points, to \$240 million per percentage point. The maximum percentage point penalty under the attorneys general negotiation was 80. This is three times that. Plus, the cap of the attorneys general was \$2 billion. This is three and a half billion dollars, not including the fact that it can be non-tax deductible, so it's well over \$4 billion. That means it's double that which was offered by the attorneys general. But the penalty doesn't stop there. If, in fact, there is a missing of the target by an excess of 20 percent, then the secretary herself can begin a process that would ultimately lift the liability cap -- the six and a half billion dollar liability cap the senator referred to -- and that's not in any of the attorneys general drafts. The bottom line is, this penalty far and away exceeds anything that was considered at the table. It is anything but weak. Or in any other bill.

Q Senator, are you --

SEN. MCCAIN: Let me just -- please, we do have plenty of time. I just want to add one additional point. Over 20 points, if they miss by over 20 points,

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they lose all protections. Anything. And I think that's an important part of the bill and I'm not sure -- I hope Mr. Bowles and the administration will take that into consideration. Yes, Laurie?

Q Senator Gregg has introduced a resolution-- sent to the Senate a resolution on whether or not tobacco companies would be granted any liability. What kind of effect would that have on -- on your bill and negotiations?

SEN. MCCAIN: I don't view a cap, frankly, as immunity. I read the language; I can vote for it, and I think the vote will be 100 to nothing.

Yes?

Oh, I'm sorry -- Senator Frist is here. Where are you, Dr. Frist? Oh -- thank you -- (laughter) --

Could I make, again, an additional comment while he's here.

Dr. Frist worked for literally 72 straight hours without stopping to come up with these FDA proposals. We had really two most difficult areas to address, as you all know -- liability and the role of the FDA. Only someone with the credentials that Dr. Frist holds, both in the medical community and here on the Hill, could we have achieved these provisions of the bill. And I'd like to ask Dr. Frist if he would just make a couple of comments.

SEN. BILL FRIST (R-TN): Thank you.

I think it's pretty clear what we've done with the FDA is recognize that the FDA does both deserve and will have authority to regulate the issues surrounding tobacco. For those of you -- many of you have asked questust very briefly, the FDA has a number of chapters. Historically, an attempt has been made to take a round peg and put it into a square hole, or a square peg into a round hole by forcing tobacco into either what we have done historically with drugs or what we have historically done with devices. It just simply does not work.

The proposal that we have put forth creates a separate chapter. We have a chapter now for drugs and devices. We have a chapter for food. We have a chapter cosmetics. We will have under this proposal a chapter for tobacco, the details of which we can talk about or will be talking about over the next several days. This is the way to address the issues surrounding tobacco. This is historical. We have built this around the concepts of a device, but we have a whole separate chapter with a total rewrite of that aspect of the FDA.

Q The tobacco industry is already responding that the provisions for the limit on advertising and look-back are unconstitutional. What's your view on that?

MR. MOORE: That's a real tough question, and my view is that the industry is close to walking away from this deal, for several reasons. The money is way higher than they ever agreed to. The look-back penalties are triple what they agreed to. And there are many of us, and most of the constitutional scholars who testified at this table agree with what we're about to say, that you need some assent, some agreement with the industry if you're going to ban all their advertisement.

We do still have a First Amendment in this country and that First Amendment guarantees the right to advertise and the freedom of speech. We believe if we don't have consent decrees and protocols signed by the industry, we will not be able to regulate the marketing and advertising as we want.

Also, the look-back penalties, where basically say if youth targets are not met, then you have to pay whether it's your fault or not, those might be held unconstitutional without the industry's assent.

But again, Senator McCain's job here was a little bit different job than we had. His job was to get a bill that would save America's children, and he's got all those provisions in there as tough as they are. The industry is going to have to figure out if they accept it or not.

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Q Do you support, Mike? Mike, do you support this bill even though it doesn't have the (type of sections ?) that you refer to?

MR. MOORE: I absolutely support the work that this committee is doing and is about to do. But I do give you this caveat; the caveat is that we may lose the marketing and advertising restrictions because we don't have agreement with the industry; we may lose the look-back penalties and we may be in litigation over this bill for a long, long time. So at some point after this bill passes this committee, I hope, there may be some folks down the line that take a look at these constitutional issues in the United States Senate or somewhere in the United States Congress and come to their senses on that issue.

SEN. MCCAIN: Let me point out one additional -- make one additional point. Every time there's been a proposal, the tobacco industry has said, "We can't live with it and we reject it." So there is a certain credibility problem there with the industry. I hope they can live with it. I hope that at the end of the day they will come around and that there will be an agreement. But clearly, there is a concern there.

Yes, sir?

Q Senator McCain, how fragile is the agreement? How much tinkering can it handle on the Senate floor?

SEN. MCCAIN: Well, obviously, anyone, especially Senator Hollings and I together, think that the product is perfect. (Laughter.) But the fact is that there can be some changes made, obviously. But I don't think that, frankly, you could change many of the fundamentals because it was so hard getting everybody to agree to what we have. I think if you made any real substantive changes you would lose one of the groups or the other, and as I said before, you can't move forward unless you have general, overall support.

Yes?

Q Senator, how many other senators -- Republican and Democrat -- do you have supporting this in the committee right now?

SEN. MCCAIN: We believe that we have the overwhelming majority on both sides of the aisle.

Any more?

Yes?

Q Sir, how about what Mike Moore said. Are you -- you've expressed some concern during committee hearings about them challenging this for years in court. Isn't this going to end up defeating your very purpose, which is to reduce youth smoking?

SEN. MCCAIN: I will repeat again: My job was to craft legislation in a bipartisan fashion, working with the administration, the Democrats and the health-care people, that would be most effectively to reduce the threat to America's young people about youth smoking.

I believe that the tobacco industry, when faced with years and years of litigation, with cases that they may have to settle for the tune of billions of dollars and uncertainty, will have to look very carefully at this proposal. I hope they do.

But I can't, and will never, be subject to a veto by the tobacco industry, and that would not make any sense.

Yes, sir? And then you.

Q Are the liability provisions one area that you think there could be compromise to satisfy the industry, where you would provide other protections in addition to --

SEN. MCCAIN: I can only say that if there is any compromise made, it would be in the same way that we've put this package together; because you can't pull out one part of the package because it all affects other parts of the package. So

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I can't say what there would be a (compromise on ?). Right now, I do not believe there is any requirement for a compromise. I believe we have the best bill possible.

Yes, ma'am?

Q Why did you choose the Leaf Act to help the farmers as opposed to other legislation?

SEN. MCCAIN: Because I relied on the expertise of Senator Hollings and Senator Ford, and many others in the agricultural community, that this was the consensus of what was best for the farmers and what the farmers believed was best for them.

Fritz, do you want to --

Q (Off mike), Senator?

SEN. MCCAIN: Yes, sir?

Q I am wondering; if you do not get the marking and advertising restrictions, will this bill do its intended purpose of reducing teen smoking?

SEN. MCCAIN: Look, I am proceeding on the assumption that this bill will become law. And I won't speculate, as a lot of what-ifs. If some tobacco executive drops dead tomorrow, that may change the equation, as well. There is all kinds of things that will happen.

But I believe that this is a good bill. I believe it will pass muster. And the important and critical aspect of it is what it does.

Again, I would point out; I don't how the tobacco companies really stand in the face of overwhelming public opinion, when there is a bipartisan broad support for a piece of legislation that will stop kids' smoking? But they're certainly willing to try.

Yes, sir?

Q Senator, are there any tax preferences for the industry in this bill?

SEN. MCCAIN: No.

Q None whatsoever?

SEN. MCCAIN: Nope.

Yes, sir?

Q Among the many complaints, the industry has said that they cannot pay this sum of money. And Wall Street has offered you some input over the last 72 hours. Can you tell us what they have told you and how you made your financial calculation?

SEN. MCCAIN: Wall Street has not seen our final iteration, but we'll be hearing from them very soon.

Q Senator McCain, there is a provision that Henry Waxman has been talking about in which any judgment against the --

SEN. MCCAIN: I really don't want to speculate on anything that's gone over on the House side.

Q It's supposedly in the bill. Can you explain it to us? It's about an 80 percent (ride/write ?)-up tax deduction, or tax credits, for any liability judgment against the industry.

Do you know anything about that?

MR. MOORE: Under the original agreement, we set up a fund, the tort fund, if you will. And basically, the original agreement, if you remember, \$4 billion, the best way to describe it was in the tort fund, and industry would pay that much money every year no matter what happens. They're also responsible for another 20 percent of that on the outside of the cap, which was another billion dollars, so a total of five. When it's raised to 6.5, pretty much the language is written the same way.

There's a reason for that. If anybody says that's a tax credit, they are wrong and misinformed. If anybody says that's a tax benefit, they are wrong and

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misinformed. The reason that we did that is we didn't want the industry just to pour money into a cap; we wanted them to continue to be responsible for an extra amount of money so that they couldn't collusively settle cases. See what I'm saying? I wanted them to be able to have to pay some extra amount of money to give them incentive to either try the cases or whatever they were going to do. So we put that in there.

Q They're going to have to pay in a sum of money every year regardless of whether there are judgments or not?

MR. MOORE: To pay off judgments. If somebody gets a judgment of a million dollars, then they would be responsible -- the cap would be responsible for -- Q What if there are no judgments?

MR. MOORE: If there are no judgments, the money goes to the public health of America.

Q So then there is money that they pay, 80 percent of \$6.5 billion that they're going to pay no matter what?

MR. MOORE: They pay \$6.5 billion, as I understand it.

SEN. MCCAIN: It's 6.5, period.

MR. MOORE: Period.

Q Regardless?

SEN. MCCAIN: Regardless. And it rolls over to the next year if it isn't used. It will roll over to be \$13 billion next year.

Q So it's \$6.5 billion every year?

SEN. MCCAIN: Every year.

Q (Off mike) -- did you consider and then reject caps on the amount of money that the attorneys who worked those states would get on it? Do you expect there to be amendments to that?

SEN. MCCAIN: The proposal that we came up with is that arbitration -- each party gets to select one of the mediators, and both parties agree on one. That's the proposal that we have.

Yes, sir?

Q If the industry does challenge some of the First Amendment -- some things on First Amendment grounds, would that put everything on hold until those are decided in court?

SEN. MCCAIN: I would hope that the Congress would go ahead and continue with the passage of legislation as quickly as possible.

Yes, sir?

Q Senator McCain, opinion polls show that the anti-tobacco position was very popular in the 1996 elections. You've got congressional elections coming up and Vice President Gore running for president in the year 2000. The administration seems to basically be saying what Erskine Bowles said today, is that what they like is the Conrad bill, which goes further than your bill.

Do you think the administration really wants a bipartisan compromise, or do they want a political issue out of this?

SEN. MCCAIN: The role that the administration has played, including Bruce Reed, Erskine Bowles, Elena Kagan -- Elaine Kagan, the Treasury people -- all of them have a constructive role and a participatory role. And we would not have reached this agreement without their help and participation.

So I assume that that kind of involvement and that kind of participation means that they are not interested in it being a political issue, but they're interested in the goal that we are, and that is of stopping kids smoking.

SEN. WYDEN: I can tell you as well, as a co-sponsor of the Conrad bill, that many of us are going to continue, as this fight goes forward onto the floor, to try to strengthen it. But what we're doing today is a good start. And if you

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had told me four years ago, after the tobacco executives said that nicotine wasn't addictive, that we'd now be having a debate between whether a pack ought to be \$1.10 tax or \$1.50, everybody would have said, "What are you smoking?" We are just going to keep building on the progress that we've made.

Q Senator Wyden, are you prepared to vote for this bill as it's written now?

SEN. WYDEN: As I said, we have not seen the hundreds of pages of technical language. I will be doing what the tobacco industry lawyers are doing as well; they're going to be trying to find loopholes in John McCain's mark, just the way they did with warning labels and the Synar amendment and the previous ad restrictions.

But I'm telling you, we are off to a good start. We're going to have a good debate in committee. For example, I'm going to offer an amendment in committee to strengthen the language with respect to secondhand smoke. I don't think it's right to let a state -- to have a state let a majority of their citizens go unprotected. But let's have that debate. That does diminish the fact that this is a good start, and we're making real progress.

Q Senator McCain, would you vote for it? Now you told me before that you wouldn't vote for -- (inaudible) -- (laughter) -- but I want to be sure you're on board -- (laughter continues) --

SEN. MCCAIN: I am confident, at the end of the day, we will have overwhelming majority on both sides of the aisle. And I certainly would.

Yes, sir?

Q A question for Senator Hollings: About an hour ago a spokesperson for the tobacco industry said that if the international tobacco controls, as listed here, are passed, that they would consider exporting tobacco production jobs overseas. What do you make of that threat?

SEN. HOLLINGS: I think they can do it. Let's see what happens.

(Cross talk, laughter.)

Q Senator McCain, do you have the support of the Senate Republican leadership for this bill, on the one hand? And also, do you have the support of Doctors Koop and Kessler?

SEN. MCCAIN: We have gotten some supportive comments from Dr. Kessler. I have not heard from Dr. Koop. I anticipate that the public health community will be supportive of this bill.

I just met with Senator Lott, and Senator Lott offered his support for this legislation and moving it to the floor of the Senate.

Yes?

Q Senator McCain, are you concerned about the tobacco companies' worry that they're going to go bankrupt if they're forced to shell out \$506 billion?

SEN. MCCAIN: You know, in all due respect, I think I've answered that about seven or eight times, but I will be glad to respond to it again. My job was to pass a piece of legislation that would stop the terrible problem in America of 3,000 kids starting smoking every day. We hope that that would be acceptable to the tobacco companies. If it is not acceptable, then I think once we get to the Senate floor, and at other points, that the problem may be revisited. But this bill has got to be a bipartisan and widely supported piece of legislation, otherwise we don't even move into that arena.

Finally, let me say, I don't speak for the tobacco companies, nor did we negotiate with the tobacco companies during the formulation of this legislation. But I do believe that American public opinion, if they accept the premise that this will address the issue of kids smoking in America, that they would be hard-pressed to win any PR battle that they might intend to wage.

Well, last question. Yes?

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Q Senator, Minnesota documents are supposed to be turned over at 5:00 p.m.
Wednesday --

SEN. MCCAIN: Yes.

Q -- which will be about the mid-way point, more or less, of your markup. Are you worried about that shaking your --

SEN. MCCAIN: Oh, no. Our legislation requires the provision and disclosure of all documents from all tobacco companies. So I don't think there's any doubt in anybody's mind now that the tobacco companies have lied to the American people. Perhaps someone in Roswell, New Mexico hasn't figured that out! (Laughter.) But the fact is, we all know the bad behavior of the tobacco company, and so I don't think there's any doubt about any new revelations would only reinforce what the majority of the American people know already.

(Aside) Can I ask if -- Mike, have you got anything else to say?

MR. MOORE: Senator, I think you've done a good job.

SEN. MCCAIN: Fritz?

SEN. HOLLINGS: No.

SEN. MCCAIN: Again, thank you all for coming.

Could I just mention one other thing real quickly? This is a first step, it's an important step. We had to have a vehicle to move forward. I believe we can move forward and I believe we will. And I remain confident that this product is something that the American people will be very accepting of and supportive of. Thank you very much.

END

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U.S. SENATOR JOHN MCCAIN (R-AZ) HOLDS NEWS CONFERENCE TO DISCUSS

THE FINAL SUMMARY OF PROPOSED TOBACCO LEGISLATION

MARCH 30, 1998

*** Elapsed Time 00:00, Eastern Time 16:04 ***

SPEAKERS: U.S. SENATOR JOHN MCCAIN (R-AZ), CHAIRMAN, SENATE COMMERCE,

SCIENCE AND TRANSPORTATION COMMITTEE

U.S. SENATOR ERNEST F. HOLLINGS (D-SC)

U.S. SENATOR WILLIAM H. (BILL) FRIST (R-TN)

U.S. SENATOR JOHN B. BREAUX (D-LA)

U.S. SENATOR SLADE GORTON (R-WA)

U.S. SENATOR RON WYDEN (D-OR)

U.S. SENATOR JOHN KERRY (D-MA)

MIKE MOORE, MISSISSIPPI ATTORNEY GENERAL

CHRISTINE GREGOIRE, WASHINGTON ATTORNEY GENERAL

*

MCCAIN: Good afternoon. Our first priority with this proposed legislation is
to prevent kids from smoking. And here's how we do that.

Cancel my last statement. It's all your fault, Ron.

I want to start over here. We're pleased to announce an agreement on a
comprehensive, bipartisan tobacco legislation that we'll be bringing to a vote
in the Commerce Committee later this week.

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First I want to thank Senator Hollings, Democrat, senior Democrat on the committee; Senator Frist, who worked out the FDA language, which was an incredibly difficult job. Senator Breaux, who worked very hard on the liability issue. Senator Gorton, Senator Wyden, who is here, who has a number of areas that he's concerned with, and Senator Kerry as well as every other member of the Commerce Committee.

I appreciate their patience and commitment to the nation's cause of dramatically reducing youth smoking.

*** Elapsed Time 00:01, Eastern Time 16:05 ***

I want to express my deep gratitude to the administration, who worked very closely with us during these hard two weeks of negotiations. Representatives of the public health community, including Matt Myers of the National Center for Tobacco-Free Kids, as well as Drs. Koop and Kessler.

Especially, and most especially, the attorneys generals led by Mike Moore of Mississippi and Christine Gregoire of Washington, and their outstanding team. All of them played key roles in advancing this cause and formulating this legislation.

This bill, the National Tobacco Policy and Youth Smoking Reduction Act, is the result of countless hours of hearings, consultations and negotiations. Youth smoking is not a bipartisan issue. It's a nonpartisan issue. The health and well being of the nation's children is a cause that transcends party affiliation.

Four hundred thousand people a year die prematurely from smoking-related disease and illnesses, and over 4.5 million teens smoke.

*** Elapsed Time 00:02, Eastern Time 16:06 ***

Every day 3,000 children take up an addiction that will kill one-third of them.

MCCAIN: Estimates are that the health care and other smoking related costs to society exceed \$45 billion alone. That figure as large as it is can never capture the sickness and human suffering behind it. And the bill we've agreed upon is tough medicine for a tough problem. It will raise retail prices on cigarettes dramatically to discourage youth smoking and imposes severe advertising and marketing restrictions on the industry. It establishes tough youth reduction goals, and requires the industry to pay substantial penalties for non-attainment.

In addition, nicotine and tobacco products will now be subject to broad regulatory and oversight by the Food and Drug Administration and the industry will be required to pay over \$500 billion to settle claims and fund vital anti-smoking and related health care initiatives.

*** Elapsed Time 00:03, Eastern Time 16:07 ***

That does not count the possible penalties associated with the so-called look back provisions, which in its maximum could be an additional \$80 billion in

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non-tax deductible penalties.

To obtain the myriad of public health benefits without challenging obstruction, the bill we place a \$6.5 billion removable cap on the industry's yearly liability. That by the way, will allow underneath that cap no restriction on consumer and class action lawsuits.

Finally, let me just give a few details and then I'll ask Senator Hollings and then others to make remarks. Experts say the most important deterrent to youth smoking is to raise the price per pack of cigarettes. Where is that? Right here... going from 65 cents in 1999 to a \$1.10 in the year 2003. That by the way, is the administration's requested number of \$1.10 a pack.

*** Elapsed Time 00:04, Eastern Time 16:08 ***

Next, we establish tough youth smoking reduction targets which you see on your summary beginning with 15 percent in year three, rising to 60 percent in year 10.

MCCAIN: Again, that's based on 4.5 million new smokers. We impose substantial penalties on the industry for failing to meet these goals which range from \$80 million per percentage point short of the target, to \$240 million per point, non-tax deductible and it's capped at \$3.5 billion per year. And we impose severe advertising restrictions so that marketing kids will cease once and for all.

Second, our goal is to insure that nicotine and tobacco products are regulated by the FDA to protect public health. The bill grants broad authority to accomplish that goal including advertising and youth access restrictions, establishes tobacco regulation under a separate FDA title so that existing drugs and devices which must meet a safe and effective standard will not be affected. Provides for FDA authority over youth access and the approval of new products.

*** Elapsed Time 00:05, Eastern Time 16:09 ***

The bill would require the president to forward a request to ban nicotine, the sale of a particular type of tobacco product, or any kind of resale sale, and no such rule could go into effect for two years after the request providing time for the Congress to vote on the matter. FDA would have no authority over farmers.

Finally, the FDA rule must take into account the impact of proposed action on demand for unregulated contraband products, meaning the possibility of the rise of a black market.

Third, the bill would provide over \$506 billion in payments from the tobacco industry over the next 25 years. This sum would be passed through to tobacco prices in order to deter youth consumption, and these funds would be used to finance prevention programs and anti-smoking advertising campaigns, reimburse federal and state health care funds for tobacco related cost, conduct health research and other vital purposes.

*** Elapsed Time 00:06, Eastern Time 16:10 ***

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MCCAIN: As I mentioned, the bill provides a yearly liability cap of \$6.5 billion which settle the state suits and there's no restriction on consumer lawsuits or class action lawsuits.

Finally, as you'll see from the summary, the bill includes strong farmer protections and other vital initiatives.

Again, I would like to thank Senator Hollings who has obviously been the most important player in this process that we've been through of many hundreds of hours of negotiations and hearings. I'd like to ask Senator Hollings to make a couple of comments and then Senator Wyden.

HOLLINGS: I can't be too high in my praise of Chairman McCain and his dedication here to this particular problem. He really knows how to work under pressure and the pressure has been great from every particular angle.

*** Elapsed Time 00:07, Eastern Time 16:11 ***

There isn't any question in my mind that having voted up here for 31 years you can vote defensively. You can always find something in every bill to say, well, ordinarily I'd go along but. That being the case, you can take this bill and defeat it a hundred to nothing because it is very complicated and not very pleasing to everybody. But be that as it may, the money's spent.

I've been up in the Budget Committee and whether it's the Republican plan or the White House plan, the Democratic plan or what have you, this money is spent and this is the first step to make sure that whatever's expended we get something done with respect to cigarette smoking and protecting the children of America.

I particularly wanted to make sure there was set-aside for the farmers because that was the only group that was not at the conference table when the agreement was made last June. That set-aside is in this particular bill.

*** Elapsed Time 00:08, Eastern Time 16:12 ***

The other very, very controversial things you could adjust one way or the other.

HOLLINGS: But this staff has really worked in a bipartisan fashion. We've worked under the leadership here of Attorney General Moore and the states attorneys general, the health community and what have you. And everybody has been considerate. They haven't been all pleased, but I can tell you Chairman McCain has listened to every one of them. And he has really given the necessary leadership to get this matter to the floor.

WYDEN: I don't want to turn this into a bouquet tossing contest, but for the last couple of weeks, John McCain has essentially been the bionic man. He has been working almost around the clock with many of us who have been at this issue for years. And I think this bill is a very good start at legislating on this important issue.

The reason I feel that way is that history shows every time in the past, Congress has sought to protect the American people, the tobacco industry has

found a way to get around that legislation.

*** Elapsed Time 00:09, Eastern Time 16:13 ***

That's what happened when warning labels were first required. That's what happened when advertising restrictions, electronic advertising restrictions were first required. That's what happened with the Synar Amendment on tough state enforcement.

And what I'm pleased about with respect to this legislation is this bill now gives us an ongoing opportunity to hold the tobacco companies, one by one accountable. If those companies don't meet hard targets in terms of reducing youth smoking, for the first time, we will have tools to deal with it. We're going to start to say, they're going to have to earn the various approaches that they've sought for so long.

*** Elapsed Time 00:10, Eastern Time 16:14 ***

WYDEN: And finally, I'm very pleased that this bill recognizes that a child is a child is a child. Back when we first got a settlement it was called the global settlement. But a lot of us pointed out, it forgot the globe. It didn't do anything to protect young people overseas. And Chairman John McCain said that there's a moral obligation to protect those young people overseas, and it is high time.

Now let me add one last thought. This bill is hundreds of pages long. We're going to be going through it now with a fine tooth comb because that's what the lawyers for the tobacco industry will be doing tonight and before the mark-up. So we still have some more work to do, but we're off to a good start.

*** Elapsed Time 00:11, Eastern Time 16:15 ***

MCCAIN: Thank you very much, Ron. Now I'd like to ask -- we have Attorney General Mike Moore of Mississippi and Christine Gregoire of the state of Washington. I just want to point out that we have had the attorneys generals with us constantly over the last two weeks, because the reality is that if they had not started this process with their settlement, we obviously would not have made the progress that we have, and I'm very grateful to them. Mike.

MOORE: Thanks. Appreciate it, Senator. Let me first say that I want to thank, again, Senator McCain. He made me a promise two or three weeks ago. I wasn't quite sure whether I believed him or not, because I didn't know him very well. And the promise that he made me was that we're going to involve the attorneys general in the process every step of the way.

I have to tell you, he gave me a call last week and he said, can you come up here, and will you stay up here every single day, because we want you to be here every day? So we've been camped out in the senator's office for the last seven days working on this thing, Christine and myself. And he's a man of his word.

*** Elapsed Time 00:12, Eastern Time 16:16 ***

Not only did he include us, for those of you who have not been watching, Dr. Koop has been in and out of the office.

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MOORE: Dr. Kessler's been in and out of the office. The folks from the White House have been in and out of the office. The Democrats have come. The Republicans have come. This has been the most inclusive process that I have been involved in in the last year of our work.

And I want to emphasize the last year.

It's almost exactly a year ago this week that we began negotiations with the industry for the June 20th settlement. It's about five years ago that we began this battle.

You've probably heard me from time to time become frustrated, probably Christine and many of the rest of us because we thought that all this work might go for naught because people were too far on the extreme on the left and too far extreme on the right.

Senator McCain somehow, with Senator Hollings help and Senator Wyden's help and Senator Breaux and many others that worked in this process have somehow brought many, many people together.

*** Elapsed Time 00:13, Eastern Time 16:17 ***

And I think this is our last best effort to get the tobacco settlement done. If this process fails, if this Commerce Committee that meets on Wednesday and Thursday fails to get a bill out to the Senate floor, Senator, I believe that this process is over. And I don't think that we'll be able to do anything quite as consequential to help America's public health and America's children as we will be in this plan.

I am satisfied that, if you look at the public health benefits in this plan and what it does to protect America's children, anybody -- if that's their focus, if that's their only focus, not fighting about the past or not being mad at the tobacco industry, that if their focus is to save children's lives and improve the public health of this country, then there's nobody in their right mind that would be against it.

And I'm very proud of this process. Thank you.

GREGOIRE: And Senator, I too want to join with my colleague, Mike Moore, and say thank you for a courageous job. I thank both you, Senator Hollings, and you, Senate Wyden, and my own senator, Slade Gorton and the others who have been involved.

*** Elapsed Time 00:14, Eastern Time 16:18 ***

It has been a year of a roller coaster for the attorneys general of this nation.

GREGOIRE: But in June of this last year, we came to Washington and we asked for leadership, and we asked for courage, and we knew at the time it would take boldness. Today, you're seeing all of that, with the leadership of Senator McCain.

Today the children of America can have hope. The parents and the aunts and the uncles, and the grandmas and the grandpas of America can have hope that we will stop children in American from being addicted to this deadly product.

It's the beginning of a process that I hope will culminate with a bill to be passed and signed in the White House in the very few coming months. Time is of the essence, children's lives are at stake, and I want to say Senator McCain, you've brought hope to America today. Thank you.

MCCAIN: Thank you very much Chris. Very kind. Now I'd like to respond to questions.

QUESTION: You started off thanking the administration for all (OFF-MIKE) but Erskine Bowles (OFF-MIKE).

*** Elapsed Time 00:15, Eastern Time 16:19 ***

MCCAIN: Oh, I thought his comments were very supportive, and I've had several conversations with him. He's been extremely supportive and his people have been with us all the way. I'm very pleased with his remarks and his reception to what our proposal is.

QUESTION: Senator McCain during the course of the negotiations (AUDIO GAP).

MCCAIN: ...I think the consensus was on both sides of the isle after consulting especially with Senator Hollings and Senator Wyden and my friends back here who as you know had a little bit different provisions in their settlement that this was the most viable option.

*** Elapsed Time 00:16, Eastern Time 16:20 ***

Our job had to be from the beginning, and must be the day that this legislation is signed by the president, bipartisan support of the public health community, support of the administration and the attorneys general.

MCCAIN: That's the way we can achieve this goal. Yes sir?

QUESTION: Senator McCain, the industry has already been (OFF- MIKE)?

(AUDIO GAP)

MCCAIN: Well first of all, let me say, my job and our job was to devise the best proposal we could to prevent children from smoking. That was our sole and only goal here. If the tobacco-- and that's why we did not negotiate with the tobacco companies during this process.

If the tobacco companies decide that this is not acceptable, and outside experts that we will consult also corroborate that, then obviously we would be willing to look at any proposal that would improve it. But let me hasten to point out we looked at all of these proposals.

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*** Elapsed Time 00:17, Eastern Time 16:21 ***

We looked at all of these different ideas and this is the best proposal that we can come up with. So, it would almost have to be providing us with new information. Yes, Scott?

QUESTION: (OFF-MIKE)

MCCAIN: Say that again.

QUESTION: You had to promise Senator Lott.... (OFF-MIKE).

MCCAIN: I know that Senator Lott from my conversations with him as short a time as an hour ago, wants to get this to the floor of the Senate and out of our committee.

I know that Senator Nickels has played a key and important role throughout this. His leadership has been vital, and I'm sure that he will play an extremely important role in this whole strategy as we move forward.

QUESTION: (OFF-MIKE)

*** Elapsed Time 00:18, Eastern Time 16:22 ***

MCCAIN: I don't know what the psychological impact is on my colleagues except to say that we moved forward with one and only goal in mind and that is that we could not, that we had to stop 3,000 kids from starting smoking everyday.

MCCAIN: And do everything we could to stop that.

We could not then that impelled us not to say, OK, what will you accept or what will you not accept as far as the industry is concerned? They can make their case. And once it goes through the committee, will go to the floor of the Senate and I'm sure that they will be making their case. But I could not craft a proposal that frankly was, could be vetoed or even modified by their concerns.

QUESTION: (OFF-MIKE)

MCCAIN: Well, I think that there are a number of areas where they may have some concerns.

*** Elapsed Time 00:19, Eastern Time 16:23 ***

I think we've satisfied most of them, at least from my most recent conversation with them. But obviously, we would be pleased to negotiate. But, I think that frankly the significant support we're going to have from the Democrat side as well as Republican side is going to reinforce our position as to the specifics of the bill. But it doesn't mean they don't have to change. Yes sir.

QUESTION: (OFF-MIKE)

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MCCAIN: (AUDIO GAP) .. and we looked, talked to the experts and said what is reasonable? And all the experts we could find told us that that was the most reasonable amount, taking into consideration for example, that we don't want to break companies that are not bad guys in this whole procedure either? Yes sir?

QUESTION: (OFF-MIKE)

WYDEN: Real briefly, the bottom line here is we've got to remove the incentives on selling to kids.

*** Elapsed Time 00:20, Eastern Time 16:24 ***

WYDEN: That's what's been on the books. That's been essentially the law for years. And I will tell you that I'm going to be looking, with my committee colleagues, to strengthening a number of the provisions. I'd like tougher penalties on look-back. I'm concerned about second-hand smoke. We've still got some issues with respect to liability.

But I'm going to be working with my colleagues -- Chairman McCain and our ranking Democrat, Senator Hollings, because we want to get a bipartisan bill out.

QUESTION: Excuse me, Senator McCain, how...

GREGOIRE: Can I...

MCCAIN: Could you wait just a minute?

GREGOIRE: Can I offer one suggestion...

MCCAIN: We'll have plenty of time -- plenty of time.

GREGOIRE: ... on the look-back? Remember now, the early stages of any violation is \$80 million per percentage point. That rises to \$160 and ultimately, the last 10 percentage points to \$240 million per percentage point.

The maximum percentage point penalty under the attorneys general negotiation was \$80.

*** Elapsed Time 00:21, Eastern Time 16:25 ***

This is three times that. Plus the cap of the attorneys general was \$2 billion. This is \$3.5 billion not including the fact that it can be non-tax-deductible, so it's well over \$4 billion. That means it's double that which was offered by the attorneys general.

But the penalty doesn't stop there. If, in fact, there is a missing of the target by in excess of 20 percent, then the secretary herself can begin a process that would ultimately lift the liability cap -- the \$6.5 billion liability cap the senator referred to -- and that's not in any of the attorneys general's draft.

The bottom line is this penalty far and away exceeds anything that was considered at the table. It is anything but weak.

BREAUX: Or in any other bill.

GREGOIRE: Or in any other bill.

QUESTION: Senator, are you...

MCCAIN: Let me just -- let me just -- please, we do have plenty of time.

I just want to add one additional point. Over 20 points -- if they miss by over 20 points, they lose all protections, anything. And I think that's an important part of the bill.

*** Elapsed Time 00:22, Eastern Time 16:26 ***

And I'm not sure -- I hope Mr. Bowles and the administration take that into consideration.

MCCAIN: Yes, Laurie.

QUESTION: (AUDIO GAP)

MCCAIN: ... well, I don't view a cap, frankly, as immunity. I read the language. I can vote for it, and I think the vote will be a hundred and nothing. Yes.

(UNKNOWN): Senator Frist is here.

MCCAIN: Oh, I'm sorry. Senator Frist is here. Where are you, Dr. Frist?

U.S. SENATOR WILLIAM FRIST (R-TN): I'm right here.

MCCAIN: Oh, thank you.

(LAUGHTER)

MCCAIN: Could I make, again, an additional comment while he's here? Dr. Frist worked for literally 72 straight hours without stopping to come up with these FDA proposals. We had really two most difficult areas to address, as you all know: Liability and the role of the FDA.

Only someone with the credentials that Dr. Frist holds both in the medical community and here on the Hill could we have achieved these provisions of the bill, and I'd like to ask Dr. Frist if he would just make a couple of comments.

FRIST: Thank you.

*** Elapsed Time 00:23, Eastern Time 16:27 ***

FRIST: I think it's pretty clear what we've done with the FDA is recognize that the FDA does both deserve and will have authority to regulate the issues surrounding tobacco. For those of you -- and many of you have asked questions -- just very briefly, the FDA has a number of chapters.

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Historically, an attempt has been made to take a round peg and put it into a square hole or a square peg into a round hole by forcing tobacco into either what we have done historically with drugs or what we've historically done with devices. It just simply does not work.

The proposal that we have put forth creates a separate chapter. We have a chapter now for drugs and devices. We have a chapter for food. We have a chapter for cosmetics. We will have under this proposal a chapter for tobacco, the details of which we can talk about or will be talking about over the next several days.

*** Elapsed Time 00:24, Eastern Time 16:28 ***

FRIST: This is the way to address the issue surround tobacco. This is historical, we have built this around the concepts of a device, but we have a whole separate chapter with a total rewrite of that aspect of the FDA.

QUESTION: (OFF-MIKE)

(AUDIO GAP)

MOORE: That's a tough, that's a real tough question, and my view is the industry is probably close to walking away from this deal for several reasons. The money is way higher than they ever agreed to, the look back penalties are triple what they agreed to.

And there are many of us, and most of the constitutional scholars who testified at this table agree with what we're about to say, that you need some ascent, some agreement with the industry if you're going to ban all their advertisement.

*** Elapsed Time 00:25, Eastern Time 16:29 ***

We do still have a first amendment in this country, and that first amendment guarantees the right to advertisement and the freedom of speech. We believe if we don't have consent degrees and protocols signed by the industry, we will not be able to regulate the marketing and advertising as we want. Also the look back penalties where we basically say if youth targets are not met, then you have to pay, whether it's your fault or not.

Those might be held unconstitutional without the industries ascent. But again, Senator McCain's job here was a little bit different job, than we had. His job was to get a bill that would save America's children, and he's got all those provisions in there. As though as they are, the industry's going to have to figure out if they accept is or not.

QUESTION: Mike do you support this bill if it doesn't have the type of (OFF-MIKE).

MOORE: I absolutely support the work that this committee is doing, and is about to do. But I do give you this caveat.

*** Elapsed Time 00:26, Eastern Time 16:30 ***

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The caveat is that we may lose the marketing and advertising restrictions because we don't have agreement with the industry.

MOORE: We may lose the look-back penalties and we may be over litiga -- in litigation over this bill for a long, long time. So, at some point after this bill passes this committee, I hope, there may be some folks down the line that take a look at these constitutional issues in the United States Senate or somewhere in the United States Congress and come to their senses on that issue.

MCCAIN: Let me point out one additional -- make one additional point. Every time there's been a proposal the tobacco industry has said, "We can't live with and we reject it." So, there is a certain credibility problem there with the industry. I hope they can live with it. I hope that at the end of the day they will come around and that there will be an agreement. But clearly there is a concern there.

Yes, sir.

QUESTION: Senator McCain, how fragile is the agreement...

(AUDIOGAP)

MCCAIN: Well, obviously anyone, especially Senator Hollings and I together think that the product is perfect. But...

(LAUGHTER)

*** Elapsed Time 00:27, Eastern Time 16:31 ***

MCCAIN: But the fact is that there can be some changes made obviously. But I don't think that, frankly, you could change many of the fundamentals because it was so hard getting everybody to agree to what we have. I think if you made any real substantial changes you would lose somebody -- one of the groups or the other. And, as I said before, you can't move forward unless you have general overall support.

Yes.

QUESTION: Senator, (AUDIOGAP).

MCCAIN: We believe that we have the overwhelming majority on both sides of the aisle.

Any more?

QUESTION: (AUDIO GAP)

MCCAIN: Yes.

QUESTION: (AUDIO GAP)

MCCAIN: My job was to craft legislation in a bipartisan fashion, working with the administration, the Democrats, the health care people, that would be most effectively to reduce the threat to America's young people about youth

smoking.

*** Elapsed Time 00:28, Eastern Time 16:32 ***

MCCAIN: I believe that the tobacco industry, when faced with years and years of litigation, with cases that they may have to settle for the tune of billions of dollars and uncertainty, will have to look very carefully at this proposal. I hope they do.

But I can't and will never be subject to a veto by the tobacco industry. That would not make any sense.

Yes, sir, and then you.

QUESTION: In the liability provision, one area that you think there could be compromise to satisfy the industry, where you would provide other protections in addition to the cap...

MCCAIN: I can only say that if there is any compromise made, it would be in the same way that we put this package together because you can't pull out one part of the package because it all affects other parts of the package.

So I can't say what there would be a -- right now, I do not believe there is any requirement for a compromise. I believe we have the best bill possible.

*** Elapsed Time 00:29, Eastern Time 16:33 ***

Yes, ma'am.

QUESTION: Why didn't you (OFF-MIKE)

(AUDIO GAP)

MCCAIN: ... because I relied on the expertise of Senator Hollings and Senator Ford and many others in the agriculture community that this was the consensus of what was best for the farmers and what the farmers believed was best for them.

QUESTION: (OFF-MIKE) settled?

MCCAIN: Yes, sir.

QUESTION: I'm wondering if you do not (OFF-MIKE).

(AUDIO GAP)

MCCAIN: Look, I am proceeding on the assumption that this bill will become law. And I won't speculate -- as a lot of what ifs. If some tobacco executive drops dead tomorrow, that may change the equation as well. There's all kinds of things that will happen.

But I believe that this is a good bill. I believe that it will -- it will pass muster and the important and critical aspect of it is what it does.

Frank, again, I would point out -- I don't know how the tobacco companies really stand in the face of overwhelming public opinion when there is a bipartisan, broad support for a piece of legislation that will stop kid smoking.

MCCAIN: But, they're certainly willing to try. Yes sir?

QUESTION: Senator, are there any tax preferences for the industry? (AUDIO GAP)

QUESTION: None whatsoever?

MCCAIN: No. Yes sir?

QUESTION: Among the many...

(AUDIO GAP)

MCCAIN: ...Wall Street has not seen our fine alliteration. But we'll be hearing from them very soon.

QUESTION: Senator McCain, there's a...

(AUDIO GAP)

MCCAIN: ...don't want to speculate on anything that's going over on the House side.

QUESTION: (OFF-MIKE) ...is supposedly in the bill.

QUESTION: He explains it about (ph) an 80 percent rider tax deduction or tax credit for any liability judgment against the industry. You know what I mean?

*** Elapsed Time 00:31, Eastern Time 16:35 ***

MOORE: Under the original agreement, we did, we set up a fund, the tort fund if you will. And basically, there is no agreement if you remember \$4 billion, best way to describe it was in the tort fund. And the industry would pay that much money every year, no matter what happens.

They're also responsible for another 20 percent of that on the outside of the cap which is another billion dollars, so a total of five. When it's raised to 6.5 pretty much the language is written the same way. There's a reason for that. If anybody says that's a tax credit, they are wrong and misinformed. If anybody says that's a tax benefit, they are wrong and misinformed. The reason that we did that, is we didn't want the industry just to pour money into a cap. We wanted them to continue to be responsible for an extra amount of money so that they couldn't collusively settle cases. You see what I'm saying. I wanted them to be able to have to pay some extra amount of money to give them the incentive to either try the cases or whatever they were going to do. So, it's we put that in there.

QUESTION: They're going to have pay in a sum of money every year?

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*** Elapsed Time 00:32, Eastern Time 16:36 ***

MOORE: If somebody gets a judgment of a million dollars then they would be responsible, the cap would -- the cap would be responsible for...

QUESTION: What if there are no judgments?

MOORE: If there are no judgments the money goes to the public health of America.

QUESTION: So then there is money, that they pay 80 percent, \$6.5 billion that they're gonna pay (OFF-MIKE).

MOORE: They pay \$6.5 billion, as I understand it.

MCCAIN: Six-point-five period.

MOORE: Period.

QUESTION: Regardless of (OFF-MIKE)...

MCCAIN: Regardless. And it rolls over to the next year...

MOORE: Right. That's right.

MCCAIN: ... if it isn't used. It will roll over to be \$13 billion next year.

QUESTION: (OFF-MIKE) 6.5 (OFF-MIKE).

MCCAIN: Not...

QUESTION: Every -- 6.5 billion every year?

MCCAIN: Yes.

QUESTION: (AUDIO GAP)

MCCAIN: (AUDIO GAP) ... we came up with is that arbitration, each party gets to select one of the mediators and the -- both parties agree on one. That's the proposal that we have.

Yes, sir.

QUESTION: If the industry does challenge (AUDIOGAP) would that put everything on hold (AUDIOGAP)?

*** Elapsed Time 00:33, Eastern Time 16:37 ***

MCCAIN: I would hope that the Congress would go ahead and continue with the passage of legislation as quickly as possible.

Yes, sir.

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QUESTION: Senator, (AUDIO GAP).

MCCAIN: ...the role that the administration has played, including Bruce Reed, Erskine Bowles, Elena Kagan -- Elena Kagan, the Treasury people, all of them played a constructive role and a participatory role. And we would not have reached this agreement without their help and participation.

*** Elapsed Time 00:34, Eastern Time 16:38 ***

MCCAIN: So, I assume that that kind of involvement and that kind of participation means that they're not interested in it being a political issue but they're interested in the goal that we are, and that is of stopping kids smoking.

WYDEN: I can tell you as well as a co-sponsor of the Conrad bill that many of us are going to continue as this fight goes forward onto the floor to try to strengthen it. But what we're doing today is a good start. And if you had told me four years ago after the tobacco executives said that nicotine wasn't addictive that we'd now be having a debate between whether a pack ought to be \$1.10 a pack or \$1.50, everybody would have said, what are you smoking? We are just going to keep building on the progress that we've made.

QUESTION: Senator Wyden, are you prepared to vote for this (AUDIO GAP)?

WYDEN: As I said, we have not seen the hundreds of pages of technical language. I will be doing what the tobacco industry lawyers are doing as well.

*** Elapsed Time 00:35, Eastern Time 16:39 ***

They're going to be trying to find loop holes in John McCain's mark, just the way they did with warning labels and the Synar amendment and the previous ad restrictions. But I'm telling you, we are off to a good start. We're going to have a good debate in committee.

For example, I'm going to offer an amendment in committee to strengthen the language with respect to second-hand smoke. I don't think it's right to let a state, to have a state let a majority of their citizens go unprotected. But let's have that debate. That does not diminish the fact that this is a good start and we're making real progress.

QUESTION: Senator McCain, would you vote for it (AUDIO GAP)?

(LAUGHTER)

MCCAIN: I am confident at the end of the day we will have an overwhelming majority on both sides of the aisle, and I certainly would

Yes, sir.

QUESTION: A question for Senator Hollings. About an hour ago, a spokesperson with the tobacco industry said that if the international (AUDIO GAP).

HOLLINGS: I think they can do it. Let's see what happens.

QUESTION: Senator do you have the support of the Senate (OFF- MIKE) one hand, and also do you have the support of Dr.'s Koop and Kessler?

MCCAIN: We have gotten some supportive comments from Dr. Kessler. I have not heard from the Dr. Koop. I anticipate that the public health community will be supportive of this bill. I just meant with Senator Lott, and Senator Lott offered his support for this legislation in moving it to the floor of the Senate.

QUESTION: Senator McCain are you concerned (AUDIO GAP).

MCCAIN: In all due respect, I think I've answered that about seven or eight times, but I will be glad to respond to it again.

*** Elapsed Time 00:37, Eastern Time 16:41 ***

My job was to pass a piece of legislation that would stop the terrible problem in America of 3,000 kids starting smoking everyday. We hope that that would be acceptable to the tobacco companies. If it is not acceptable then I think that once we get to the Senate floor, and at other points, the problem may be revisited, but this bill has got to be a bipartisan and widely supported piece of legislation, otherwise we don't even move into that arena.

Finally let me say, I don't speak for the tobacco companies, nor did we negotiate with the tobacco companies during the formulation of this legislation, but I do believe that American public opinion, if they accept the premise that this will address the issue of kids smoking in America, that they would be hard pressed to win any PR battle that they might intend to wage.

*** Elapsed Time 00:38, Eastern Time 16:42 ***

Last question.

QUESTION: (OFF-MIKE)

(AUDIO GAP)

MCCAIN: ...our legislation requires the provision and disclosure of all documents from all tobacco companies. So, I don't think there's any doubt in anybody's mind now that the tobacco companies have lied to the American people. Perhaps someone in Roswell, New Mexico hadn't figured that out. But the fact is that we all know the bad behavior of the tobacco company and so, I don't think there's any doubt about any new revelations would only reinforce what the majority of the American people know already. Could I ask Mike, have you got anything else to add?

MOORE: Senator, I think you've done a good job.

MCCAIN: Again, thank you all for coming. Could I just mention one other thing real quickly. This is the first step, it's an important step. We had to have a vehicle to move forward. I believe we can move forward and I believe

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we will.

*** Elapsed Time 00:39, Eastern Time 16:43 ***

And I remain confident that this product is something that the American people will be very accepting of, and supportive of. Thank you very much.

END

NOTES:

???? - Indicates Speaker Unknown

- Could not make out what was being said.

off mike - Indicates Could not make out what was being said.

LANGUAGE: ENGLISH

LOAD-DATE: March 31, 1998

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Business Week

March 23, 1998

SECTION: WASHINGTON OUTLOOK; Number 3570; Pg. 45

LENGTH: 591 words

HEADLINE: THE TOBACCO DEAL: SUDDENLY, THE CORPSE IS STIRRING

BYLINE: EDITED BY OWEN ULLMANN; By Richard S. Dunham

BODY:

A pall hung over the National Governors' Assn. winter meeting in late February -- and with good reason. The guys thought they had come to pronounce last rites over the \$ 365 billion national tobacco settlement and say goodbye to the fat cuts their states would get from the deal. Indeed, with Hill Republicans and Dems bitterly divided, Iowa Governor Terry E. Branstad declared the 1997 accord between state attorneys general and Big Tobacco ''dead.''

Well, somebody better call the undertaker, because the corpse has sprung back to life. Fearing a backlash if they let the measure die, President Clinton and key members of Congress are laboring to collar the votes for enactment this year. Their goal: Make sure states and the feds get their hands on the megabucks a tobacco deal would generate.

Signs of compromise are cropping up all over Capitol Hill. Such lawmakers as Senate Commerce Committee Chairman John McCain (R-Ariz.), House Commerce Committee Chairman and longtime industry defender Tom Bliley (R-Va.), and anti-tobacco Representative Henry Waxman (D-Calif.) all say they're open to a bipartisan solution. ''We have a weird phenomenon taking place,' ' notes a veteran Senate staffer. ''People are actually trying to be statesmen.' ' ''DO-NOTHING.' ' Clinton, needled by GOP leaders for failing to spend enough political capital on a deal, has launched an offensive of his own: He's calling for a massive industry-funded campaign to curb teen smoking as part of any agreement.

Republicans, for their part, want to avoid the ''do-nothing'' label come the fall elections. At the same time, the GOP covets tobacco cash to pay for tax cuts and new health programs. And by persuading the industry to sign off on a tough, bipartisan bill, Republicans hope to deflect Democratic charges that they're captives of a special interest that has funneled millions into GOP campaign coffers.

Other hopeful signs: Big Tobacco, launched an ad campaign on Mar. 11, calling for congressional action. The next day, a bipartisan group led by Senator John Chafee (R-R.I.) planned to unveil a compromise that would finance the deal with a \$ 1.50-per-pack hike for cigarettes over two years.

The improved odds for an accord can be seen in the shifting public pronouncements. A month ago, GOP leaders were blasting Clinton for proposing new social initiatives financed with illusory tobacco-deal dough. Now, House Speaker Newt Gingrich (R-Ga.) and Senate Majority Leader Trent Lott (R-Miss.) talk of using the money for tax relief or entitlement reform. ''There is [now] an

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assumption that Congress is going to pass comprehensive tobacco legislation,'
says White House domestic policy aide Elena Kagan.

Getting a deal remains tricky, given all the feuding Hill barons with overlapping jurisdictions. After a let's-reason-together session called by McCain on Mar. 11, the senator said there was 'some agreement [on] broad parameters.'

But even if the turf wars can be halted, Clinton and Congress must solve two potential dealbreakers: how much protection to give Big Tobacco from legal action, and whether to pay billions in fees to trial lawyers who represent the states. Some public-health groups have vowed to kill a deal they find too industry-friendly; trial lawyers have sworn the same fate for a pact they judge to be attorney-hostile.

Nobody minimizes the obstacles ahead. Cautions McCain: The coalition backing the agreement is 'very, very fragile.' Still, the tobacco deal doesn't look ready for burial just yet.

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LEVEL 1 - 27 OF 133 STORIES

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March 22, 1998, Sunday, NASSAU AND SUFFOLK EDITION

SECTION: NEWS; Page A04

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HEADLINE: TOBACCO DEAL'S HAZY OUTLOOK. WORKING OUT DETAILS OF THE TOBACCO DEAL

BYLINE: Harry Berkowitz. STAFF WRITER

BODY:

Nine months after tobacco companies signed a deal to pay billions of dollars a year and drop ads with characters such as Joe Camel and the Marlboro Man, the industry still doesn't know if it will get what it most wants in exchange: limits on lawsuits.

And anti-smoking advocates still don't know whether they will get what the June 20 deal offered to them: a massive anti-teen-smoking package including sharply higher cigarette prices and hundreds of millions of dollars a year in anti-smoking ads.

The effort to turn the \$368.5 billion deal - which was negotiated with state attorneys general - into federal law has become wrapped in a swirl of party politics, federal budget battles, immense corporate lobbying and rising anger at the industry amid a stream of embarrassing disclosures.

The monumental battle now centers on the Senate Commerce Committee, which is racing to unveil a bill before Congress starts a recess April 6.

That panel, whose chairman, Sen. John McCain (R-Ariz.), has been consulting privately with two White House officials, public health activists C. Everett Koop and David Kessler, attorneys general and other committee chairmen, has delayed that unveiling from this Wednesday to a week later. The House has yet to begin a comparable effort, further complicating passage.

McCain is sounding out various lawmakers on whether a compromise on liability limits could gain bipartisan support if they - as well as the White House and public health activists - see the rest of the package as strong enough.

Neither the White House nor the Republican majority wants to be accused of being soft on tobacco. Critics of the industry say they don't want to make concessions to tobacco companies and end up being fooled by new tricks.

But without the kind of limits on lawsuits that could soothe Wall Street's fears about the industry's fate, tobacco companies say they will walk, leaving any tough tobacco legislation vulnerable to years of legal challenges.

Although the liability issue is crucial for the industry, a web of disagreements over tobacco farmer subsidies, multimillion-dollar lawyer fees and Food and Drug Administration authority to regulate tobacco is complicating the

Newsday (New York, NY), March 22, 1998

task. Further potential land mines include an ongoing trial in which Minnesota is suing the industry and has just won an order, which was temporarily delayed, for disclosure of 39,000 additional industry documents. The industry has settled suits with three states and tobacco legislation could halt other government suits, but a victory by Minnesota could raise the stakes.

Despite the stumbling blocks, some of the key proponents of tobacco legislation, including the White House, say there are signs of possible breakthroughs as they prepare to blame Republicans if the efforts fail.

"What we care about is that there be comprehensive legislation that is passed by a bipartisan Congress, and we think a lot of progress is being made," said Elena Kagan, a White House domestic policy adviser. "We're not interested in a pared down bill that won't accomplish our public health goals."

Senate Majority Whip Don Nickles (R-Okla.), meanwhile, says that although he is skeptical Congress will pass a bill resembling the original package, there is some possibility that more modest liability limits could fly and save the legislation.

In one version of such a compromise, a few senators from both sides of the aisle proposed a cap of \$8 billion on damages the industry would have to pay in a single year. That would be sharply higher than the \$5 billion cap in the June agreement and would cover punitive damage payments and class-action suits, neither of which would be barred as they were in the original deal.

"We could live with the liability limits," Kagan said, "if the bill accomplishes the president's public health objectives," especially FDA jurisdiction over tobacco, which the industry has challenged in court but would not oppose under the deal.

But Nickles warns that if the Clinton administration sticks with plans to use a big chunk of the tobacco money to fund an array of social programs, Republicans will instead push for a scaled-down anti-smoking / anti-drug program, possibly with only a modest tax boost or none at all.

In contrast to Clinton's proposal to spend tobacco funds on a variety of projects including smaller class sizes, last week, the Senate Budget Committee, led by Sen. Pete Domenici (R-N.M.), specified that money from a tobacco package should be used largely to shore up the ailing Medicare trust fund.

As evidence of how much importance the tobacco industry is placing on legislation, it took out full-page ads in newspapers last week in support of the June deal. And last year, the companies spent more than \$19 million on outside lobbyists, triple the 1996 level, to argue for the deal, according to Public Citizen, a consumer watchdog group.

"The real motivation for the industry is to try to create some kind of financial security given the number of court cases out there," said Martin Feldman, a tobacco industry analyst at the brokerage firm Salomon Smith Barney, pointing out that tobacco company stock prices have languished over the past year amid doubts that legislation with liability limits will pass. "There is huge uncertainty."

Newsday (New York, NY), March 22, 1998

One more case, however, went in the industry's favor Thursday, as a jury in Indiana found that tobacco companies could not be held responsible for the 1991 cancer death of a nurse who was exposed to second-hand smoke from patients.

If legislation gets passed with both price increases and liability limits, analysts expect tobacco company earnings to drop 10 to 20 percent - because of sharp drops in cigarette sales - but stock prices to jump 40 percent or more, "because people won't be worrying about the industry going bankrupt anymore," said Gary Black, an analyst at Sanford C. Bernstein & Co.

Michael Moore, the Mississippi attorney general who led last year's negotiations for the deal, says chances for passage are up. "There is probably more momentum last week and this week than I've seen before in the whole process," Moore said. Working Out Details Of the Tobacco Deal

Since tobacco companies signed a deal with state attorneys general in June aimed at cutting teen smoking and funding smoking-related health costs, various members of Congress have proposed a range of bills to turn that settlement into law. But key issues remain unresolved:

How much would tobacco companies pay?

Under the negotiated deal, they agreed to pay \$368.5 billion over 25 years. Proposals would raise that to as much as \$620 billion and might turn voluntary payments into an imposed tax or fees if the industry drops its support.

How much would cigarette prices rise to fund the payments?

Several proposals aim to increase prices by as much as \$1.50 per pack, but the time frame ranges from two to 10 years.

What is the goal for cutting teen smoking rates?

Goals range from a cut of 60 percent to 80 percent over 10 years, including a goal of 65 percent in a recent bipartisan proposal by several senators. If the companies fail to meet the goals, they would have to pay penalties ranging up to \$20 billion per year.

What protection would tobacco companies get from lawsuits?

Under the deal, class-action lawsuits would be barred and companies would not pay punitive damages in individual lawsuits based on past wrongdoing. They would pay no more than \$5 billion in a single year for compensatory damages. Government lawsuits would end.

Many in Congress oppose putting any limits on tobacco industry liability. The recent bipartisan proposal would cap annual damage payments at \$8 billion a year and end government lawsuits but would not ban new class-action suits or punitive damages.

How would the legislation affect tobacco ads?

Under the deal, cigarette companies would eliminate all billboard ads, Internet ads, vending machine sales, all ads in magazines popular with minors, some in-store ads and all human and cartoon characters from other ads. If the

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industry withdraws support, the White House says, Congress may have to scale back those rules to avoid a First Amendment fight.

Who would oversee the industry?

Under the deal, the Food and Drug Administration would regulate cigarettes and tobacco advertising but would have to prove that restrictions or a ban on nicotine would not create a black market. Some proposals would strengthen FDA authority beyond that while others would soften it.

Who gets the money?

The deal included billions of dollars to reimburse states for smoking-related Medicaid costs and fund anti-smoking efforts. President Bill Clinton has proposed using part of the money to fund various social programs. Some Republicans want to use part of the money to fund tax cuts. - Berkowitz

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Press briefing by Chris Jennings & Elena Kagan

HIGHLIGHT:

The Briefing Room

BODY:

MR. TOIV: Good afternoon. As previously announced, we have - the President earlier today, as you know, made a very strong push for two very important pieces of legislation, the Patient's Bill of Rights and comprehensive tobacco legislation. And here to talk just a little bit and to answer any questions you may have on those subjects are Chris Jennings, the Deputy Assistant to the President for Health Policy, and Elena Kagan, who is Deputy Assistant to the President for Domestic Policy.

Q What are the prospects on the Hill for getting these two bills through?

MR. JENNINGS: Just very, very brief, very, very brief, and then I'm going to have Elena talk, and then we'll do the Q's and A's.

Today, when the President went to the AMA, he was the first President in 15 years to go before the AMA. The last one was Ronald Reagan in 1983. And he pointed out that there are many issues that divide the AMA historically and the White House on a whole host of issues. But also there have been numbers that have - unite us. And they include, of course, just most recently, the nomination and confirmation of Dr. Satcher to be Surgeon General. But the two issues that he specifically addressed today were the quality protections and the tobacco.

I'm going to talk about the quality protections for just a moment and advise you of the report that the President released today. It's this Patients' Protections in the States report that's now available to you. The most important part of this report is, as you may have heard, that some people on the Hill who oppose this legislation suggest that this quality protection is radical and out of the mainstream, et cetera. What this report does show is that - and 44 states have passed already, and governors have signed legislation that passed - that have enacted at least one of these provisions of the bill or rights, and many, many others have done many more.

And interestingly enough, 28 out of 32 governors have signed such legislation into law, too. And this is not a partisan thing, obviously, in so doing. I can say that because 90 percent of both Democrats and Republicans have signed this legislation into law. What this report does is it goes on a state-by-state basis through the Consumer Bill of Rights that the President has endorsed and it shows where the states all rank. Clearly there are some states that are coming closer to compliance and others who are not.

But the biggest point, of course, of all is that even if all states did so they would not have the jurisdiction over millions of Americans who are in

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self-insured plans and in federal health programs, which is why the President has called for federal legislation this year in the Congress - called for bipartisan legislation to be passed this year. And we fully expect that we will get that done before the end of this Congress.

So with that, I'll conclude, bring Elena up, and then answer any questions you may have.

MS. KAGAN: The President also urged the AMA to continue pressing Congress to pass comprehensive tobacco legislation. As the President said in his radio address, as the President repeated today, there are about 70 working days the Congress has before they go out. And the President urged Congress to really apply themselves in order to be able to pass comprehensive tobacco legislation in those 70 days. This is a unique opportunity, a historic opportunity. And the challenge that the President made to Congress was you can take advantage of this opportunity and protect the health of our children or instead you can fail to do so.

As the President has said before, and as he talked about again to the AMA, passing comprehensive tobacco legislation now, according to our best estimates, will save over a million lives, or just about a million lives within the next five years. It will prevent about 3 million kids from starting to smoke, and as a result save about a million lives. So the President again made clear that Congress ought to step up to the plate and ought to pass comprehensive national tobacco legislation this year.

Q What are the prospects?

MS. KAGAN: We think the prospects are good. We think the prospects are strong. We have a lot of momentum that's been gaining in the Senate. There are some bipartisan bills that are being worked on. Senators Harkin and Chafee and perhaps a couple of others will probably introduce a bill soon. We also know that Senator McCain is working with both Republicans and Democrats on the Commerce Committee on a comprehensive tobacco bill. So we think that there has been a lot of progress made in these last few weeks. We think that there are people on both sides of the aisle who care about this, just as the President cares about this. And we think people will be embarrassed to go home without doing anything.

So when we put all that together, a commitment on the one hand and a little bit of embarrassment if nothing happens on the other, we think the prospects for getting comprehensive tobacco legislation are strong.

Q Senator Lott today said that any money from tobacco legislation should be used for anti-smoking programs and health measures, which seems to go a fair amount of the way toward what the President has called for, except Lott says it shouldn't be used for social programs. How do you view those statements? Are they helpful to your cause, or are you in disagreement with him?

MS. KAGAN: Well, there is an assumption in that statement, and the assumption is that Congress is going to pass comprehensive tobacco legislation and that there are going to be revenues that are generated as a result of that legislation. And we're very glad that Senator Lott and anybody else accepts that premise.

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The question of how to spend those monies is, to us, a secondary one. Most - our budget spends much if not most of those monies on health-related programs and on children-related programs. And we are very glad to engage Senator Lott or any other senator on the question of our priorities and their priorities and the question of how to spend these monies. But the most important thing is that we actually get the legislation that generates this revenue. And we're very glad to see Senator Lott and anybody else make statements that are based on the premise that we will.

Q The President today talked about his Medicare proposal. Are you - can I ask a question about that? He talked about one part of it in which if a worker becomes eligible for Medicare under the rules now, and therefore drops out of private insurance, the worker's spouse would not necessarily be eligible if that spouse is younger. And the President wants to cover the spouse, as I understand it. Does that also include same-sex partners? It's not a frivolous question.

MR. JENNINGS: Under current Medicare statute that would not be applicable and therefore would not be included in our legislation. Beyond that I can't comment. I would say that what we are very excited about on the Medicare buy-in initiative, which for those of you who were around in the last Congress when we were debating CBO numbers versus OMB numbers, that the Congressional Budget Office absolutely confirmed the President's proposal, in fact, gave it some estimates that were showing that it would actually provide coverage to more people for less cost and would not undermine the Medicare Trust Fund in any way whatsoever. And it seems to us that to the extent that it meets that criteria and it helps real people and we have a real market failure in the individual market, particularly in those age groups, 55 to 65, it is absolutely inexcusable that we don't move ahead to address that.

And the President - he mentioned these other two issues that we share common vision with the AMA - this one they have not yet come to a conclusion on, but I'll tell you, this is something that should be at the highest priority level for congressional consideration, and it will certainly be one of ours this year. And the President referenced it in today's speech.

Q Chris, is the President proposing any specific changes in the Employee Retirement Income Security Act? And if so, what are they?

MR. JENNINGS: Well, the legislation assumes modifications to ERISA as it applies to a whole host of standards - issues related to specialist coverage. In fact, you will recall, Robert, that on February 19th we got a report from the Labor Department that virtually every single federal - every single consumer right that was recommended by the President's commission would not be covered under federal legislation for those self-insured plans, and therefore, clearly, by extension, we would have to modify ERISA to include those federal standards and those protections in order to ensure all Americans had those protections.

Q Can they sue for damages under the President's proposal?

MR. JENNINGS: The President has indicated that he believes that these bill of rights should be enforced. We have not made a final determination on exactly what the best enforcement mechanism is. As you know, there are bills on the Congress that do include remedies, state-based remedies. That certainly is one viable option. It is not the only viable option. And we look forward to working with the Congress to finalize a conclusion on that issue.

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Q So you have no position on enforcement right now?

MR. JENNINGS: The position that we have is we believe that these provisions should be enforceable. The question really is how best to do it. One way is the one represented by many members of Congress, bipartisan support, endorsed by AMA and others, which include these state-based remedies. But that may not be the only remedy or the only option for enforcement, and we're working with the business community, the consumer community, and providers and others to develop and determine which is the best way to go.

Q Can you remind me, if you've got the figures, how much of this year's budget is dependent upon the tobacco settlement?

MS. KAGAN: I don't remember the percentage. Our budget projects that the tobacco legislation will generate about \$65 billion over five years.

Q Senator Lott also suggested in his comments today that the White House hasn't been doing enough to push its priorities, including tobacco. Is there something that the White House has failed to do in your estimation? And what do you think about that comment?

MS. KAGAN: I think the White House has been working awfully hard impressing Congress on tobacco, and that Congress is beginning to move on tobacco exactly because we've been pressing so hard. Last fall the President stated his principles for tobacco legislation that really provided Congress with a road map for what that legislation ought to look like. This winter we gave a detailed budget which said exactly how much money we thought tobacco legislation ought to generate and how we would use that money.

And since then, we've been meeting with everybody who will meet with us. And we've been meeting with senators and with members of the House. We've been meeting with Republicans. We've been meeting with Democrats - and talking to them about whatever part of this legislation they want to talk about. We've given clear guidance, and we are working this very hard. And we think that Congress is coming around or that there has been some momentum generated, particularly in the Senate, precisely because we're working it that hard. And we're going to continue to do so.

MR. JENNINGS: Any more questions.

(No response.)

MR. JENNINGS: Thank you very much.

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